

Initiatives for the Preservation of Significant Resources in the Coastal Georgia Region

*Agricultural and Environment Lands
and Cultural Resources*

**Model Ordinances for
Purchase of Development Rights
Transfer of Development Rights
Planned Resource Districts**

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For:



Prepared by:



With Legal Assistance from:



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Under the leadership of the Coastal Regional Commission, with direction and participation from the region's cities and counties, involvement of stakeholders, public agencies and other regional partners, this Model Ordinance is provided as a resource tool for cities and counties in the implementation of *The Regional Plan of Coastal Georgia*.

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Introduction

Coastal Georgia is the second fastest growing region in the State. The coastal Georgia region encompasses six coastal counties, four inland counties and has a total land area of over 5,110 square miles (the “Region”). The Region comprises a diverse array of natural resources and landscapes, ranging from rural and working lands, fishing communities and ports, military facilities, small towns and urban neighborhoods, barrier islands and coastal wetlands.

The Coastal Regional Commission (CRC) is charged with planning for a 20-year timeframe. During this 20-year timeframe, the Region will continue to attract new people, businesses and industries, as well as visitors, major events and tourists. To facilitate growth and development opportunities and to protect, sustain and enhance the natural and built environments, the CRC provided the leadership along with public agencies, municipalities and counties to develop the regional vision called *The Regional Plan of Coastal Georgia* (the “Plan”).

The Plan identifies guiding principles and strategies related to the Region’s agricultural and environmental lands and cultural resources, along with other important regional systems. These guiding principles affirm that the Region contains some of the highest biodiversity, natural productivity and some of the most important habitat areas in the State. The Region contains many significant heritage assets, which contribute to its continued education, tourism, economic development, public health and quality of life.

In order for the Region’s vision to become a reality, the Plan integrates local, state and federal planning efforts and establishes achievement thresholds for future implementation. The Plan identifies implementation options and standards for local governments to utilize in planning for growth and development. The CRC and other

public agencies have developed a variety of growth management tools for utilization by local governments to implement their vision, as well as the regional vision for coastal Georgia. The growth management tools described herein are effective techniques in the protection and preservation of the following intrinsic resources that are fundamental to coastal Georgia’s future.

Agricultural Lands

The Plan identifies prime agricultural farmland as an important part of the Region’s natural area, having both conservation value and contributing to its rich culture as a traditional industry. Farmland, especially prime agricultural lands, is important to the production of the nation’s food and fiber and is best suited for producing food, feed, forage, fiber and oil seed crops. This land has the soil quality, growing season and moisture supply needed to economically produce a sustained high yield of crops. If managed properly, prime farmland will have maximum yields with minimum input of labor, chemicals and capital. Agricultural lands are also available in the Region to support non-farm development. The characteristics of prime agricultural land such as good drainage, high relative elevation, good soil quality and attractive rural settings are attributes that make those areas also suitable for non-agricultural development and the most vulnerable to change.

Regional issues and opportunities relative to agricultural lands are identified in the “Agricultural Lands” element of the Plan. Other elements also identify related issues and opportunities which are included below. This element identifies the following list of items that are addressed in the Plan and requires the development of companion implementation measures for use throughout the Region’s communities:

- Loss of community character and agricultural heritage



- Absence of farmland protection ordinances
- Development pressures threaten to diminish the regions' agricultural activity
- Maintenance of the regions' agricultural land which provides community character and one of the area's greatest amenities
- Sprawling residential development on large lots served by septic systems and private wells, consuming sizable amounts of agricultural lands
- Implement farmland protection strategies for keeping productive farmland and agricultural uses
- Protect agricultural areas from succumbing to development pressures
- Protect agricultural uses to retain vital farmland and support local business by providing agricultural services and materials
- Provide incentives to protect and preserve open space, agricultural land and other sensitive natural resources
- Encourage local governments to adopt policies that foster mixed use, higher densities in places where infrastructure and facilities are already in place

Environmental Lands (Natural Resources)

The Plan identifies natural resource conservation as an important part of the Region's future because it contains some of the highest biodiversity, scenic and natural landscapes and significant habitats in the State. These natural resources provide significant benefits to the Region's education, tourism industry, economic development, health and quality of life. Protecting, restoring and managing natural resources are a priority in coastal comprehensive planning and development. Environmental lands that comprise this resource category is reflected by a diverse assemblage of landscapes, and include, but not limited to barrier islands, marsh hammocks, salt marshes, aquifer recharge areas, longleaf pine forests, river corridors and

floodplains, wetlands, natural forested areas, and places comprising unique topographical features and wildlife habitat.

Regional issues and opportunities relative to environmental lands are identified in the "Natural Resources" element of the Plan. Other elements also identify related issues and opportunities which are included below. This element identifies the following list of items that are addressed in the Plan and requires the development of companion implementation measures for use throughout the Region:

- Loss of environmentally sensitive ecologically valuable resources
- Development within wetlands and floodplains
- Loss of land cover and tree canopies
- Removal of natural vegetation that buffers marshlands
- Inconsistent protection of environmentally sensitive resources from one local government to another
- Create incentives for TDRs and PDRs that allow development to be directed to areas away from environmentally sensitive areas
- Provide incentives to protect and preserve open space and other sensitive natural resources
- Wetlands and floodplains offer opportunities for greenspace preservation

Cultural Resources

The Plan identified cultural resource preservation as an important part of the Region's past and future because it contains many significant



heritage assets. These cultural resources contribute significantly to the Region's education, tourism industry, economic development, health and quality of life. Protecting, restoring and managing areas of cultural significance are a priority in coastal comprehensive planning and development. This resource category reflects a rich diversity and includes historic trails and roads, native American sites, historic structures and places, places of architectural significance, lands associated with historic events and lands containing pre-historic resources.

Regional issues and opportunities relative to places and lands of cultural importance are identified in the "Cultural and Historical Resources" element of the Plan. Other elements also identify related issues and opportunities which are included below. This element identifies the following list of items that are addressed in the Plan and requires the development of companion implementation measures for use throughout the region:

- Development pressure on culturally significant communities
- Loss of community character and architectural heritage
- Promote and protect historic sites and structures

Toward Implementation

These implementation techniques are tools that are consistent with the Plan's Growth Management principles and standards. They may be utilized by municipalities and counties throughout the Region to meet the achievement-level requirements for planning and development in their communities. In response to these issues and opportunities, a framework of guiding principles, strategies and performance standards were developed for promoting the preservation of agricultural and environmental lands and cultural resources. It is important to note that all of the model ordinances are based on voluntary participation by the landowner and approval by the local governing body.

The model ordinances provided herein consists of three growth management and legislative techniques. While each technique may be specifically suited for a particular region, landscape, resource, property or area, the general hierarchy of preference for implementing any of the techniques should follow a sequencing process. This sequencing process states that consideration is first given to Purchase of Development Rights (PDR), second to Transfer of Development Rights (TDR) and lastly to utilizing the Planned Resource Districts (PRD), where approved and appropriate. All three techniques however, may be important tools for the local government to use as part of implementing an initiative to protect agricultural and environmental lands and cultural resources in the Region.

The CRC and other public agencies are committed to working with communities to implement quality growth initiatives as identified in the Plan. Through technical assistance, workshops, research and grant programs, the CRC assists local governments achieve broader social impacts – from community development, to preserving family farms, to best management practices. The CRC's aim is to advocate and promote good policy and planning practices by keeping policy-makers at all levels abreast of innovative approaches and sustainable practices.



Enabling Legislation

The Georgia Land Conservation Act enables local governments to participate in land conservation activities such as the protection of agricultural lands. Such authority provides for the establishment of local government programs including the Purchase of Agricultural Conservation Easements (PACE), also known as Purchase of Development Rights (PDR).

Georgia statutes enable local governments to implement transferable development rights (TDR) programs in their communities, upon adoption of local TDR legislation.

Lastly, throughout Georgia, a local government has the power to enact agricultural zoning under its general zoning power and needs no specific statutory authorization from the State to adopt

such land management ordinances and regulations.

The Model Ordinances contained herein are permitted by the State of Georgia for communities in the Region to implement upon adoption of local legislation enabling such activity. The Model Ordinances included with this Agricultural Land Preservation initiative include the following:

- Model Purchase of Development Rights (PDR) Ordinance;
- Model Transfer of Development Rights (TDR) Ordinance; and
- Model Planned Resource Districts (PRD) Ordinance



Purchase of Development Rights (PDR)



Purchase of Development Rights

Introduction

Purchase of Development Rights (PDR) has become a popular tool for protecting agricultural and environmental lands and cultural resources from development. Under a PDR program, a landowner voluntarily sells the development rights of a parcel of land to a public agency or to a charitable organization, such as a land trust, local government or state government. Development rights are comparable to other rights that come with a parcel of land such as mineral rights, water rights or timber rights. When a landowner sells its development rights, the right to develop or subdivide that parcel is permanently relinquished.

The landowner retains all other rights and responsibilities associated with the land, such as the right to farm, to hunt, timber and to post it as private property as well as paying property taxes. The landowner is compensated for the value of the development rights removed from the property by the purchase. When a landowner sells development rights, a restriction on development is recorded in a conservation easement and attached to the property deed, which runs with the title to the land.

The Model Purchase of Development Rights Ordinance ("Model PDR") has been developed for application within the 10 counties and 35 municipalities served by the Coastal Regional Commission (CRC) to implement *The Regional Plan of Coastal Georgia* (the "Plan").

PDR programs are flexible, and local governments can customize their program to meet the objectives of both landowners and communities. For example, a conservation easement aimed at preserving agricultural lands, environmental lands or cultural resources may allow the landowner additional flexibility to develop elsewhere where new development does

not limit the property's long-term resource potential.

Background

The Plan identifies a number of Issues and Opportunities and a framework to encourage sustainable policy and planning practices for development in the coastal Georgia region (the "Region"). Specifically, the Plan's Regional Growth Management, Intrinsic Resource: Natural, Intrinsic Resources: Cultural and Historic, Agricultural Lands and Business and Industry Issues identify Guiding Principles, Strategies and Performance Standards that provide the implementation measures required to attain "quality growth" outcomes within the 20-year planning timeframe of the Plan. This Model PDR is one of the implementation options designed to fulfill these requirements.

Landowners throughout the Region are already volunteering to restrict the use of their lands, by executing conservation easements with local land trusts or other entities to preserve the resources located upon their lands. The objectives of a voluntary Conservation Easement program and a PDR program are the same—both protect agricultural and environmental lands and cultural resources from future development and community growth pressures. The difference between these two programs is the monetary or purchase component of a PDR program, which is contingent upon available funding at the local government level.

Funding for a PDR program comes through the local government in the form of locally derived revenues and/or matching funds from federal and state agencies, donations from private individuals and the activities of foundations, trusts and conservancies. Typically, once a PDR program



has been created, there are more interested landowners than available funding, to acquire all of the development rights submitted for acquisition through a PDR program. Therefore, a PDR program requires significantly more oversight from the local government, especially in the review and prioritization of submitted lands for purchase.



When a landowner sells its development rights, a conservation easement is attached to the property.

This Model PDR provides the framework that allows local governments to establish their own

PDR program, in order to meet the objectives of the community and promote the preservation of the local agricultural economy, environmental lands and cultural resources for the Region. The Model PDR is recommended to be implemented in its entirety. However, there are several key decision points of the Model PDR, which must be reviewed by the local government to calibrate the PDR Ordinance in order to reflect local conditions that will strengthen the success and implementation of a PDR program. As part of the adoption process, the local government should first decide which of the three resources (if not all of them) should be included in the PDR Ordinance.

PDR programs face financial limitations in their successful implementation throughout the country. Most local governments do not have the resources needed to purchase significant amounts of development rights from agricultural and environmental lands and cultural resources. Therefore, it is critical that PDR programs meet federal and state program requirements to ensure local governments are able to maximize funding opportunities.



Purchase of Development Rights Model Ordinance

**MODEL PURCHASE OF DEVELOPMENT RIGHTS ORDINANCE [RESOLUTION]****Sec. [#]-1 PURPOSE AND INTENT.**

It is the purpose and intent of this Ordinance [Resolution] for the county [city] to establish a Purchase of Development Rights (hereafter PDR) program to provide for the purchase and management of agricultural lands, environmental lands or cultural resources for permanent preservation. Lands eligible for the PDR program shall be beneficial to the agricultural industry or protects significant environmental lands and cultural resources as defined by this Ordinance [Resolution]. This Ordinance [Resolution] provides a means to achieve the visions and goals of the county [city] Comprehensive Plan. Further, this Ordinance [Resolution] seeks to protect agricultural and environmental lands and cultural resources in order to maintain a long-term preservation of these resources, to preserve rural character and scenic attributes, to enhance important environmental benefits, sites and places of heritage importance and to maintain the quality of life of residents.

Sec. [#]-2 APPLICABILITY OF REGULATIONS.

The provisions of this ordinance shall only apply to those areas which are consistent with the purpose and intent of this Ordinance [Resolution]. Compliance with all other applicable county [city] ordinances, regulations and resolutions is required; however, when in conflict, the provisions of this ordinance shall prevail.

Sec. [#]-3 PURCHASE OF DEVELOPMENT RIGHTS.

The purchase of development rights is a method for permanently conserving and protecting land by acquiring the rights to develop certain lands from more intensive uses and development. A conservation easement permanently restricts the land upon completion of the purchase of development rights transaction. The value of development rights is the difference between the fair market value of the land without the conservation easement and its value as restricted by the conservation easement.

Acquisition. Acquisition may be from purchase, gift, grant, bequest, devise, covenant or contract. The county [city] shall only purchase development rights of lands where agricultural and environmental lands and cultural resources are located upon that are voluntarily offered for sale by a landowner.

Contract Purchase Provisions. The county [city] is authorized to enter into installment purchase contracts, options, and agreements or take receipt of tax-deductible donations of easements, consistent with applicable law. The county [city] is authorized to pay interest on the declining unpaid principal balance at a legal rate of



interest consistent with prevailing market conditions at the time of execution of the installment purchase contract.

Professional Assistance. The county [city] may contract with recognized and legally established nonprofit land trusts or other experienced and qualified individuals, parties or entities that would assist the county [city] in the process of negotiating easements and purchase contracts, establishing baseline studies and procedures for monitoring, and actual monitoring of any conservation easement acquired under this Ordinance [Resolution].

Funding. The county [city] is authorized to seek grants from federal and state agencies and private foundations, organizations and individuals for funding for expenditures incurred in carrying out this Ordinance [Resolution].

Sec. [#]-4 PURCHASE OF DEVELOPMENT RIGHTS REVIEW BOARD.

The Board of Commissioners [Mayor and City Council] shall appoint a Review Board under this Ordinance [Resolution] to oversee the county [city] PDR program as well as adopt membership requirements, restrictions and obligations. The Review Board shall conduct their duties in accordance with the county [city] rules and procedures as they pertain to county [city] boards and committees.

The Review Board body shall be responsible for, but not be limited to, the following:

- (a) Establish a selection criteria for the ranking and prioritization of applications to the program. The selection criteria must be approved by the Board of Commissioners [Mayor and City Council] prior to each application cycle;
- (b) Establish a points-based appraisal formula for determining the value of the conservation easements, which shall be subject to the approval of the Board of Commissioners [Mayor and City Council];
- (c) Review and provide oversight in scoring all applications according to the adopted selection criteria;
- (d) Rank and prioritize the top scoring applications for acquisition and making recommendations to the Board of Commissioners [Mayor and City Council] for the purchase of development rights;
- (e) Approve the restrictions and permitted uses under the conservation easement;
- (f) Establish the price to be offered to the landowner and authorize negotiations for the purchase of development rights and conservation easement. All



purchases of development rights and conservation easements must be approved by the Board of Commissioners [Mayor and City Council]; and

- (g) Establish monitoring procedures and overseeing subsequent monitoring to insure compliance with the conservation easement. Enforcement of the conservation easement in the case of non-compliance shall be the responsibility of the Board of Commissioners [Mayor and City Council].

Sec. [#]-5 ELIGIBILITY.

Landowners or representatives with the authority to execute a voluntary conservation easement of any parcel in the county [city] (except as noted below) may apply for consideration by the PDR program. Eligible parcels shall meet the purpose and intent of this Ordinance [Resolution]. Parcels not eligible include, but not limited to, the following:

- (a) Any parcel from which all development rights have previously been sold or transferred;
- (b) Any parcel on which a conservation easement (legally binding agreement between a landowner and a governmental body or charitable organization qualified under O.C.G.A. § 44-10-2(2) that restricts the type and amount of development and use that may take place on a property) or other permanent deed restriction has been previously granted;
- (c) Any parcel fully developed based on its existing zoning;
- (d) Any parcel or portion of a parcel that has been designated as open space (land on which no additional development associated with residential, industrial or commercial purposes is allowed, except in compliance with this ordinance and other county [city] zoning and planning regulations or Planned Resource District or similar designation;
- (e) Any publicly owned parcel; and
- (f) Any land within riparian buffers mandated by state or local law.

Sec. [#]-6 APPLICATION REQUIREMENTS.

An eligible landowner or authorized representative shall provide, but not be limited to, the following:



- (a) Name, address and telephone number of applicant and applicant's agent, if any;
- (b) Proof of ownership of the property;
- (c) Metes and bounds written legal description and plat prepared within 90 days of the date of application by a licensed surveyor;
- (d) Written description of the physical characteristics of the property;
- (e) Site plan which illustrates existing or proposed dwellings, historic structures, easements or other encumbrances; and
- (f) The processing fee as established by the authorized county [city] department ("the Department").

Sec. [#]-7 CALCULATING THE VALUE OF DEVELOPMENT RIGHTS.

Appraisal. The Review Board shall utilize a state certified appraiser to determine the value of the development rights or shall establish a points-based appraisal method and formula for determining the value of the conservation easement prior to each application cycle. The appraisal may calculate the value of the development rights as the difference between the fair market value of the property with all development rights intact and the value of the property with a conservation easement in place. The Review Board may establish guidelines, consistent with state standards, for the state certified appraiser to use in determining the fair market value or the resource value. The points-based appraisal method provides a consistent and objective value for all applicants and allows landowners to determine the value of the conservation easement prior to submitting an application. The formula may establish a Base Value based on the parcel's soil characteristics, size and proximity to other protected resources. The Base Value may be increased if the parcel qualifies for a market value adjustment based on the parcel's location within the county and the amount of road frontage. In determining the market value adjustment, an average of actual vacant land sales of parcels over 20 acres in size sold during the prior three years shall be determined. The parcel may also qualify for a premium based on its proximity to sewer and water as determined by formula established by the Review Board. The Review Board shall review the points-based appraisal method at the end of each application cycle and compare conservation easement values relative to actual fair market sales in the county.

Landowner Appraisal. The landowner may obtain, within a reasonable time frame, an appraisal of the development rights from a state certified appraiser at the landowner's expense. The appraisal may calculate the value of the development rights as the difference between the fair market value of the property with all development rights



intact and the value of the property for agricultural use with a conservation easement in place. The Review Board may establish guidelines, consistent with state standards, for the state certified appraiser to use in determining the fair market value or the resource value.

Authority to Negotiate. The Review Board shall approve the price to be offered and paid for the conservation easement. If the landowner obtains an independent appraisal, the Review Board may elect to renegotiate the initial offer based on qualified circumstances.

Payment Options. The landowner may be paid a cash payment or offered an installment purchase contract, or a combination of both.

**Sec. [#]-8 PROGRAM COSTS.**

The cost of services ordered by the Review Board in relation to the county's [city's] agricultural land preservation program shall be paid from all available PDR program funding sources within the county [city], including state and federal matching funds, which may include the cost of appraisal, engineering, surveying, planning, financial, legal, environmental assessments, title searches, developing baseline assessments, monitoring easements. The county [city] shall not be responsible for any expenses incurred by the landowner incidental to any aspects of application for purchase of the development rights that the Review Board has determined is the responsibility of the landowner, which may include title searches, appraisals, or surveying.

Sec. [#]-9 RESOURCE LANDS PRESERVATION FUND.

Preservation Fund. Available funding for the county [city] agricultural land preservation program shall be deposited in a special preservation fund. Money in such preservation fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of county [city] money. The revenues from the deposit and/or investment of the preservation fund shall be applied and used solely for the purpose of purchasing of development rights and conservation easements under this Ordinance [Resolution], making payments obligated under installment purchase contracts, promoting agricultural land preservation programs, or paying for costs of administering or enforcing the county [city] resource lands preservation program.

Other Funds. Supplemental or matching funds from private sources or other governmental agencies, including local municipalities, federal or state agencies, may become available to pay a portion of the cost of acquiring development rights or conservation easements or to supplement or enlarge such acquisitions. The Board of Commissioners [Mayor and City Council] authorizes the Review Board to use such funds to purchase development rights of resource lands and acquire conservation easements.

Public Funds. The county [city], upon approval by the Board of Commissioners [Mayor and City Council], may finance the PDR program through one (1) or more, but not be limited to, the following sources:

- (a) General appropriations by the county [city];
- (b) Proceeds from the sale of development rights by the county [city];
- (c) Grants;



- (d) Donations;
- (e) General fund revenue;
- (f) Bonds or notes as permitted by law;
- (g) Special assessments as permitted by law; and
- (h) Other sources approved by the Board of Commissioners [Mayor and City Council] as permitted by law.

Sec. [#]-10 CONSERVATION EASEMENT PROVISIONS.

- (a) Upon the agreement of the purchase of development rights by the county [city] Review Board, the landowner and the Board of Commissioners [Mayor and City Council] shall execute a conservation easement, approved by the Review Board and the Board of Commissioners [Mayor and City Council], that will perpetually protect the parcel's unique resource by preventing any use that would significantly impair or interfere with the existing value or use of the land. The conservation easement shall contain a provision indicating that the easement runs with the land and may not be terminated except as provided for in this Ordinance [Resolution] and the easement;
- (b) Restrictions on that portion of the property included in the conservation easement shall include, but not be limited to, the following:
 - (i) Property shall not be divided into parcels less than 40 acres in size, unless the parcel is already under 40 acres in size;
 - (ii) The construction of residences for new owners of any divisions shall be prohibited;
 - (iii) Construction of any other buildings, unless they are built for uses consistent with resource being protected shall be prohibited;
 - (iv) Commercial or industrial activity that is inconsistent with the resource being protected shall be prohibited;
 - (v) Excavation of topsoil, sand, gravel, rock, minerals or other materials that significantly impairs or interferes with the value of the property shall not take place without prior written approval of the Board of Commissioners [Mayor and City Council] or its designee.



- (c) Permitted uses and retained development rights in the conservation easement shall include, but not be limited to, the following:
 - (i) Construction of buildings necessary for and consistent with the allowed uses and activity of land.
 - (ii) The right to construct additional residences essential to the ongoing maintenance or operation of the resource are permitted. All structures built must be in conformance with all applicable federal, state and local laws, ordinances and regulations;
 - (iii) The right to maintain, renovate, add on to, or replace existing structures. All structures built must be in conformance with all applicable federal, state and local laws, ordinances and regulations; and
 - (iv) The right to sell, mortgage, bequeath or donate the property, provided any conveyance will remain subject to terms of the easement.
 - (v) The right to: retain water rights, erect a photovoltaic array (solar farm); erect a wind farm; install a geothermal loop; sell carbon or nutrient credits; sell wetland or stream credits; and conduct aquaculture or algae farming.
- (d) In addition to the provisions of the Georgia Uniform Conservation Easement Act, each conservation easement shall contain, but not be limited to, the following:
 - (i) Metes and bounds written legal description and plat prepared by a licensed surveyor;
 - (ii) Restrictions and permitted uses of the property;
 - (iii) Assurances that prohibitions will run with the land and bind the landowner and every successor in interest to include a statement that the conservation easement shall survive any merger of the easement interest and the fee simple interest of the property; and
 - (iv) A statement that nothing in the conservation easement shall be construed to convey to the public a right of access or use of the property and that the landowner of the property, his heirs, successors and assignees will retain exclusive right to such access or use subject to the terms of the conservation easement.

Sec. [#]-11 ADMINISTRATION.



The Board of Commissioners [Mayor and City Council] hereby designates and provides authority to the [Name] Department to implement this Ordinance [Resolution]. The Department shall be the sole administrator of the procedures and functions associated with the implementation of this Ordinance [Resolution]. The Department shall perform, but not be limited to, the following:

- (a) Receive applications and ensure program requirements for eligibility are satisfied;
- (b) Retain and catalogue approved PDR transactions;
- (c) Prepare and distribute an annual report providing statistics on PDR program activity;
- (d) Provide standard conservation easement language;
- (e) Staff and provide technical assistance and meeting support to all elected and appointed boards that may consider actions contained in this Ordinance [Resolution]; and
- (f) Establish standardized administrative policies and procedures to carry out the intent of this Ordinance [Resolution].

Sec. [#]-12 DEFINITIONS.

Conservation easement: Shall mean a non-possessory interest of a holder in real property imposing limitations or affirmative obligations, the purpose of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

Development: Shall mean an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use, or the preservation of significant environmental land and cultural resources.

[See Decision Point Number 1]



PDR Decision Point Number 1

DEFINITIONS

Agricultural Lands

In the case of this portion of the model ordinance which addresses agricultural preservation, it is recommended that the definition used to determine agricultural lands be limited to the characteristics associated with the following six (6) major categories of agricultural and farming related lands.

1. Prime Agricultural Soils

Lands which include prime agricultural soils as mapped by the National Resources Conservation Service (NRCS) or other qualified organizations, regardless of the current usage.

2. Active Agricultural Lands

All existing or historically active agricultural lands, including cropland and pasture, regardless of soil suitability

3. Other Agricultural Lands

Other specific agricultural uses, including orchards, groves and nurseries.

4. Livestock Operations

Livestock feeding operations, including chicken, cattle, dairy and swine.

5. Designated and Mapped Agricultural Lands

Lands that are currently designated by an agricultural land use or zoning code. This should only be used if the land use designation accurately reflects agricultural uses.

6. Buffers

Lands which are adjacent to any of the above which may serve as buffer providing long-term protection to preserve agricultural uses.

The following additional criteria may also be included as minimum eligibility requirements:

Minimum size of sending area

A minimum size for eligibility should be considered; however, it may be beneficial to identify a small enough acreage so as not to exclude some of the smaller, family-operated farms.

Inclusion of non-agricultural lands within the same parcel

Wetlands, forested uplands, hedge rows and property with steep slopes when adjacent to agricultural lands can provide important buffer and watershed protection functions. If the local government elects to only adopt an agricultural PDR Ordinance and not include



environmental lands, the extent that these lands should be included as part of the overall PDR gross acreage should be considered. For example, it is recommended that a percentage of these non-agricultural lands be permitted to be part of the agricultural PDR gross area as support buffer and be treated no differently than the actual agricultural lands. Generally, it is recommended that no more than 30% of non-agricultural lands be permitted in the PDR gross area calculations. Alternatively, a reduction factor may be used for these adjacent non-agricultural lands. Alternatively, if the local government also includes environmentally significant lands in the PDR Ordinance, these buffer areas could be qualified under either designation.

Environmentally Significant Lands

In the case of this portion of the model ordinance which addresses preservation of environmentally significant lands, it is recommended that the definition used to determine environmental lands be limited to the characteristics associated with the following six (6) major categories of environmentally significant lands.

1. Regionally Important Resources (RIR)

Conservation status of species or ecosystem on a one to five scale

- 1 = critically imperiled
- 2 = imperiled
- 3 = vulnerable
- 4 = apparently secure
- 5 = secure

2. Priority Ecological Communities

Coastal & Estuarine Land Conservation Plan (CELCP)
Southern Coastal Plain Ecological Communities

- Salt Marshes
- Bottomland Forests
- Freshwater Wetlands
- Carolina Bays
- River Corridors and Flood Plains
- Marsh Hammocks
- Barrier Islands
- Maritime Forests
- Long Leaf Pine Forest

3. Other Environmentally Important Areas

- Flood plain protection areas
- Area providing water quality protection for rivers, streams and lakes
- Aquifer recharge areas



- Areas of unique topographical features such as steep slopes, erodible soils and stream banks
- Areas and projects supporting high-priority wildlife and plant species and the preservation, restoration or enhancement of the habitats for State and Federally protected or listed species and other species of critical concern
- Locally and regionally identified conservation priorities

4. Land Adjacent to Environmental, Agricultural and Cultural Resources

- Land adjacent to public lands
 - City and County Parks and recreation Areas, State and National Forests, Wildlife Management Areas, State Parks, National Parks and Monuments, etc
- Land adjacent to Private Land Trusts and Private Conservation Areas
- Land adjacent to CELCP Priority Areas, including upland buffers to wetlands
- Land adjacent to prime agricultural lands
- Land adjacent to cultural sites, archeological and historic resources, heritage corridors, including national, state and local historic sites

5. Land Providing Linkages to Promote Connectivity and Regional Systems

Land providing connectivity between existing or proposed conservation lands which will contribute toward the creation of:

- Local and regional greenways, blueways and flyways
- Wildlife corridors
- Local and regional trails

6. Creation of Buffers for the Protection of Scenic Resources and Corridors

- Maintain Local and Regional Rural, Natural or Agricultural Character
 - Land to create buffers along rural highways and public roadways
 - Land protecting perimeter of significant viewsheds
- Land identified to protect the views of and from Local, State and National Parks, Seashores, Wildlife Refuges, Recreational Areas, etc, including entry way and approach corridors
- Land identified to protect scenic quality and user experience associated with bikeways, trails, scenic drives and multi-use paths

Cultural Resources

In the case of this portion of the model ordinance which addresses preservation of cultural resources, it is recommended that the definition used to determine cultural resources be limited to the characteristics associated with the following six (6) major categories of cultural resources.

1. Sites Identified on Local, State or National Directories or Registers

2. Historic Trails and Roads



3. **Native American Sites** (Middens, Burial Grounds, etc.)
4. **Lands Surrounding Historic Structures**
(Local, State or National Significance)
5. **Site Identified with Historic Events**
(Battlegrounds, Treaties, Meetings, etc.)
6. **Site with Pre-historic Features**



Transfer of Development Rights (TDR)



Transfer of Development Rights Introduction

Transfer of Development Rights (TDR) is a land conservation technique that has been used by local governments to protect agricultural and environmental lands and cultural resources. A TDR program reduces or eliminates development in these three important resources in exchange for the right to develop or use other parcels more intensely. Specific development rights can be transferred from areas identified as Sending Areas to property located in areas more suitable for development know as Receiving Areas. The Sending Area landowner maintains ownership of the underlying land, but must agree to record a conservation easement or deed restriction on the property when the TDR credits are transferred, thus protecting the underlying use and restricting future development on the property. The owner or developer of the Receiving Area property may then increase the permitted density or intensity of a use according to the number of development rights purchased and as allocated by the local government. This process thereby transfers the development potential from the Sending Area property to the Receiving Area property.

The landowner retains all other rights and responsibilities associated with the land. For example, a property owner would continue the right to farm agricultural land and to post it as private property, as well as paying property taxes. The landowner is compensated for the value of the development rights removed from the property by the transfer.



Designation of sending and receiving areas



Transfer of increased density credits or other development rights



Parcel with conservation easement and development parcel with increased density or other development rights



The TDR program can sound relatively simple in theory – density is transferred from one property to another, but in practice, they need to address many issues for long-term success. The value of the development rights is determined by the free market and many things can affect the profitability of buying and selling those development rights. For example, the local government must define the criteria for the designation of Sending and Receiving Areas, develop the criteria to calculate and allocate the TDR credits from the Sending Areas to the Receiving Areas, and designate how trades occur in the marketplace and the mechanism from which transfers are approved. The underlying zoning in both the Sending and Receiving Areas, as well as land values in the marketplace will influence how a TDR program works. Depending on the objectives of each community, the local government may get involved in the TDR process to the extent of managing or promoting TDR banks or take more of an administrative role by simply processing, approving and monitoring applications. A TDR program, however, can be a very effective tool to achieve the community's agricultural land use preservation goals. It works best in conjunction with other policies and especially in areas undergoing growth pressures. Solutions can be achieved with multiple benefits for the landowners and the developers as well as the community itself. A TDR program can help obtain land preservation goals at relatively minor cost without exclusively relying on tax revenues and other traditional funding sources, which are often difficult to adopt.

This Model Transfer of Development Rights Ordinance ("Model TDR") provides the framework to allow local governments to establish their own TDR program that meets the objectives of the community to promote

the local agricultural economy and protects significant environmental lands and cultural resources in the coastal Georgia region. The Model TDR is recommended to be implemented in its entirety however the local government should first decide if all or which of the three resources should be included in the TDR Ordinance. There are several key decision points of the Model TDR which must be reviewed by the local government to calibrate the TDR Ordinance to reflect local conditions in order to strengthen the success and implementation of a TDR program. The decision points are further defined to include specific recommendations for each of the three resources.

Background

The Model TDR has been developed for application within the ten (10) counties and thirty-five (35) municipalities served by the Coastal Regional Commission (CRC) to implement *The Regional Plan of Coastal Georgia* (the "Plan"). The coastal Georgia region encompasses six coastal counties and four inland counties and has a total land area of over 5,110 square miles (the "Region").

The Plan identifies a number of Regional Issues and a corresponding framework to encourage sustainable development outcomes for the coastal region. Specifically, the Plan's Regional Growth Management, "Intrinsic Resource: Natural" and "Business and Industry" Issues identify Guiding Principles, Strategies and Performance Standards that provides a framework to attain "quality growth" outcomes within the Region during the 20-year planning timeframe of the Plan. This Model TDR is one of the implementation options designed to fulfill these requirements.



Transfer of Development Rights (TDR)

Model Ordinance

**MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE [RESOLUTION]****Sec. [#]-1 PURPOSE AND INTENT.**

It is the purpose and intent of this Ordinance [Resolution] to provide for the transfer of development rights (the maximum development that would be allowed on a parcel under its current zoning) from one property to another to promote the preservation of agricultural and environmental lands and cultural resources and encourage smart growth in appropriate areas. Further this Ordinance [Resolution] provides a means to achieve the visions and goals of the county [city] Comprehensive Plan.

Sec. [#]-2 APPLICABILITY OF REGULATIONS.

The provisions of this ordinance shall only apply to those areas which are consistent with the purpose and intent of this Ordinance [Resolution]. Compliance with all other applicable county [city] ordinances, regulations and resolutions is required; however, when in conflict, the provisions of this ordinance shall prevail.

Sec. [#]-3 TRANSFER OF DEVELOPMENT RIGHTS.

The transfer of development rights is a method for permanently conserving and protecting land by transferring the rights to develop from one property (sending area) to another (receiving area).

Sec. [#]-4 DESIGNATION OF SENDING AREAS.

Sending areas are those properties from which development rights may be transferred to a receiving area. Additional sending areas may be designated through the amendment process as set forth in the county [city] ordinances, regulations and resolutions and the procedures and requirements set forth in O.C.G.A. §36-66A-2.

[See Decision Point Number 1]

**Sec. [#]-5 DESIGNATION OF RECEIVING AREAS.**

Receiving areas are those properties which may receive development rights from a sending area. Receiving areas are those properties intended for development, designated for development and consistent with the county [city] Comprehensive Plan. Additional receiving areas may be designated through the amendment process as set forth in the county [city] ordinances, regulations and resolutions and the procedures and requirements set forth in O.C.G.A. §36-66A-2.

[See Decision Point Number 2]

Sec. [#]-6 ELIGIBILITY.

Landowners or representatives with the authority to transfer fee simple ownership of any parcel in the county [city] (except as noted below) may apply for a Transfer of Development Rights Certificate. Parcels not eligible are as follows:

- (a) Any parcel from which all development rights have previously been sold or transferred;
- (b) Any parcel on which a conservation easement (legally binding agreement between a landowner and a governmental body or charitable organization qualified under O.C.G.A. § 44-10-2(2) that restricts the type and amount of development and use that may take place on a property) or other permanent deed restriction has been previously granted;
- (c) Any parcel fully developed based on its existing zoning;
- (d) Any parcel or portion of a parcel that has been designated as open space (land on which no additional development associated with residential, industrial or commercial purposes is allowed, except in compliance with this ordinance and other county [city] zoning and planning regulations or Planned Agricultural District;
- (e) Any publicly owned parcel; and
- (f) any land within riparian buffers mandated by state or local law.

Sec. [#]-7 APPLICATION REQUIREMENTS FOR A TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE.

An eligible landowner or authorized representative must provide the following:



- (a) Name, address and telephone number of applicant and applicant's agent, if any;
- (b) Proof of ownership of the sending property;
- (c) Metes and bounds written legal description and plat prepared within 90 days of the date of application by a licensed surveyor;
- (d) Written description of the physical characteristics of the property;
- (e) Site plan which illustrates existing or proposed dwellings, historic structures, easements or other encumbrances; and
- (f) The processing fee as established by the authorized county [city] department ("the Department").

Sec. [#]-8 CALCULATION OF DEVELOPMENT RIGHTS IN SENDING AREAS.

Within 95 days of the receipt of a complete application for a Transfer of Development Rights Certificate, the Department shall certify the number of transferable development rights, assign serial numbers accordingly, and issue a Transfer of Development Rights Certificate. Development rights shall be calculated in accordance with the formula included in the county [city] Land Value Plan on a gross acreage basis, as attached as Exhibit 1. For each eligible gross acre of the sending area, one (1) development right (TDR) will be issued. The area of a parcel with fractional acreage will be calculated by rounding the total acreage down to the nearest whole number and issuing one (1) TDR per acre.

[See Decision Point Number 3]

Sec. [#]-9 CALCULATION METHODS FOR ALLOCATION OF DEVELOPMENT RIGHTS IN RECEIVING AREAS.

The following formulas shall be used to compute the amount of land that must be preserved in the sending areas to develop a receiving area:

[See Decision Point Number 4]

**Sec. [#]-10 APPEAL OF CALCULATION.**

Any landowner or authorized representative aggrieved by a final decision of the Department related to the certification of Transfer of Development Rights may appeal such final decision to the Board of Zoning Appeals by filing, in writing, setting forth plainly and fully why the calculation is in error. Such appeal shall be filed no later than thirty (30) days after the date of the Department's final decision.

Sec. [#]-11 APPROVAL OF TRANSFER OF DEVELOPMENT RIGHTS AND APPEAL PROCESS.

Any proposed transfer of development rights shall be subject to the notice, hearing and approval requirements of O.C.G.A. § 36-66A-2. A transfer of development rights shall be approved by the Board of Commissioners [Mayor and City Council] if it meets the requirements of this Ordinance [Resolution].

Interlocal Agreement. If the Sending and Receiving Areas are in different governmental jurisdictions, it is required for the Sending and Receiving jurisdictions to enter into an Interlocal Agreement that provides for the authority to approve or deny the Transfer of Development Rights.

[See Decision Point Number 5]

Sec. [#]-12 APPEAL OF TRANSFER DECISION.

Any appeal or other legal challenge to the Board of Commissioners [Mayor and City Council] final decision regarding a Transfer of Development Rights shall be pursued by petition for writ of certiorari filed with the Superior Court of [NAME] County within thirty (30) days of the date of the Board of Commissioners [Mayor and City Council] decision. The applicant's petition and all other initial filings with the Superior Court shall be served upon the named defendants/respondents in accordance with O.C.G.A. § 9-11-4.

Upon filing such appeal, the Clerk of Superior Court shall give immediate notice thereof to the Director of the Department. Within thirty (30) days of such notice, the Director shall cause to be filed with the Clerk of the Superior Court a certified copy of the proceedings before the Board of Commissioners [Mayor and City Council] and the decision of the Board of Commissioners [Mayor and City Council].



Upon appeal there is a presumption of correctness of the Board of Commissioners [Mayor and City Council] decision which must be overcome by the appealing party.

Sec. [#]-13 RECORDATION OF TRANSFER OF DEVELOPMENT RIGHTS TRANSACTIONS (SENDING AREAS).

Deed of Transfer. A Deed of Transfer shall be required to convey development rights from a sending parcel to a purchaser. The Deed shall be valid only if it is signed by the owner or authorized representative of the sending parcel, complies with all legal requirements for the transfer of real estate, contains provisions established by the Department and is recorded in the chain of title after the conservation easement is secured against the sending parcel.

A Deed of Transfer shall contain a metes and bounds written legal description and a plat prepared by a licensed surveyor, the names and addresses of the Grantor and the Grantee of the development rights, the serial numbers of the TDR credits being conveyed along with a copy of the TDR certificate issued by the Department and proof of the execution and recordation of a conservation easement on the sending parcel.

Conservation Easement. To convey the certified development rights on a sending area, a conservation easement between the owner of the sending area and an organization authorized by the laws of the State of Georgia to accept, hold and administer conservation easements, pursuant to O.C.G.A. § 44-10-1 Georgia Uniform Conservation Easement Act must be signed and recorded with the [NAME] County Clerk, prior to the Deed of Transfer. Conservation easements established pursuant to this section may not be released or nullified by any party.

The Department may develop a model conservation easement form and require it be used to fulfill the requirements of this section.

In addition to the provisions of the Georgia Uniform Conservation Easement Act, each conservation easement shall contain:

- (a) Metes and bounds written legal description and plat prepared by a licensed surveyor;



- (b) Prohibitions against the use and development of the sending area property which are inconsistent with open space as defined in Sec. [#]-6(d);
- (c) Assurances that prohibitions will run with the land and bind the landowner and every successor in interest to include a statement that the easement shall survive any merger of the easement interest and the fee simple interest of the property;
- (d) The serial numbers of the TDR credits being transferred in the Deed of Transfer from the sending area property subject to the conservation easement; and
- (e) A statement that nothing in the easement shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his heirs, successors and assignees will retain exclusive right to such access or use subject to the terms of the easement.
- (f) A statement indicating that the property owner has the right to continue or pursue the following uses or activities: water rights to withdraw water for uses, erect a photovoltaic array (solar farm); erect a wind farm; install a geothermal loop; sell carbon or nutrient credits; sell wetland or stream credits; and conduct aquaculture or algae farming.

Sufficiency of Documents. Prior to the recordation of the Deed of Transfer and the conservation easement, parties to the transaction must obtain an opinion from a licensed Georgia attorney that the Deed and easement have been executed by all necessary parties and is perpetual and binding on the landowner and every successor in interest. A copy of this document shall be provided to [NAME] County.

Re-issuance of TDR Certificates. In the event of the transfer of fewer than all of a landowner's development rights, the landowner must return the original TDR certificate to the Department upon the recordation of the conservation easement and Deed of Transfer. The landowner must provide a copy of the Deed of Transfer that contains the serial numbers of the development rights transferred.

Within 95 days of the receipt of the complete TDR certificate, the Department shall reissue a certificate to the landowner reflecting the remaining TDR credits and the corresponding serial numbers.



Sec. [#]-14 RECORDATION OF TRANSFER OF DEVELOPMENT RIGHTS TRANSACTIONS (RECEIVING AREAS).

The following information shall be recorded on the face of any plat for property which receives development rights under the provisions of this Ordinance [Resolution]:

- (a) A statement that the development rights used in the plat have been transferred in accordance with the Deed of Transfer, prescribed in Sec. [#]-12.
- (b) The serial numbers of the TDR credits conveyed along with a copy of the TDR certificate issued by the Department.

Sec. [#]-15 ADMINISTRATION.

The Board of Commissioners [Mayor and City Council] hereby designates and provides authority to the Department to implement this Ordinance [Resolution]. The Department shall be the sole administrator of the procedures and functions associated with the implementation of this Ordinance [Resolution]. The Department shall:

- (a) Issue letters of interpretation of TDR Certificate requests upon application and review;
- (a) Issue TDR Certificates upon recording of appropriate easements;
- (b) Retain and catalogue redeemed TDR Certificates;
- (c) Prepare and distribute an annual report providing statistics on TDR program activity;
- (d) Provide standard conservation easement language;
- (e) Staff and provide technical and meeting support to all elected and appointed boards that may consider actions contained in this Ordinance [Resolution]; and
- (f) Establish standardized administrative policies and procedures to carry out the intent of this Ordinance [Resolution].



Transfer of Development Rights

Discussion of Key Decision Points

Transfer of Development Rights (TDR) programs are flexible and local government should customize their TDR program to meet the objectives and concerns of landowners, environmental and historical organizations, developers and the local community. The TDR program should be tailored to the community's own planning and conservation policies, administrative capabilities and market conditions.

The local government should first decide if all or which of the three resources (agricultural, environmental and cultural) should be included in the TDR Ordinance. The TDR ordinance will need to address requirements common to each resource as well as criteria specific to agricultural, environmental and cultural lands.

Optional Provision for TDR Applications in Urban Areas

Agricultural lands proposed to be preserved will always be located in rural areas. Environmental and cultural sites however may be located in either rural or urban locations. The local government may decide whether to include a provision to allow the transfer of development rights from one urban site to another urban site in order to preserve important environmental or cultural sites within an urban, municipal or built-up area. This provision can be a valuable tool to promote smart growth principals such as increase density, public open space, pedestrian circulation and mixed use development. Whenever a TDR ordinance is proposed to be applicable to environmental and cultural sites within urban areas, special criteria will need to be considered. A brief discussion of the various issues is discussed with each of the following decision points.

Key Decision Points:

As part of the preparation of a Model TDR Ordinance, five major key decision points have been identified which should be thoroughly vetted by the local government during the refinement process of adopting a TDR Ordinance. Other minor decision points can be identified throughout the model ordinance and additional issues and topics have been identified in the Other Considerations section described below.

- 1 - Designation of Sending Areas**
- 2 - Designation of Receiving Areas**
- 3 - Calculation of Development Rights in Sending Areas**
- 4 - Calculation Methods for Allocation of Development Rights in Receiving Areas**



5 - Interlocal Agreement



TDR Decision Point Number 1

Designation of Sending Areas

The following eligibility criteria for defining Sending Areas within each of the three (3) resources has been developed for local governments to consider and is not intended to be all-inclusive. The local government may add or delete eligibility criteria and may assign a priority or preferred ranking to each of the eligibility criteria based on the local conditions and community goals.

In the case of environmentally significant lands and cultural resources, consideration may be given to assigning less priority to designating lands which may have other existing local, State or Federal protection. For example, upland buffers along State of Georgia wetlands have existing protection through the Georgia Department of Natural Resources (DNR) and many wetlands under private ownership may be jurisdictional by the U.S. Army Corps of Engineers. While existing jurisdictions may not ensure permanent protection, there may be other lands that are more immediately at risk or vulnerable that should be given a higher value or priority for inclusion in a TDR Ordinance.

Agricultural Lands

It is recommended that the criteria used to determine Sending Areas should be limited to the characteristics associated with the following six (6) major categories of agricultural and farming related lands.

1. Prime Agricultural Soils

Lands which include prime agricultural soils as mapped by the National Resources Conservation Service (NRCS) or other qualified organizations, regardless of the current usage.

2. Active Agricultural Lands

All existing or historically active agricultural lands, including cropland and pasture, regardless of soil suitability

3. Other Agricultural Lands

Other specific agricultural uses, including orchards, groves and nurseries.

4. Livestock Operations

Livestock feeding operations, including chicken, cattle, dairy and swine.

5. Designated and Mapped Agricultural Lands

Lands that are currently designated by an agricultural land use or zoning code. This should only be used if the land use designation accurately reflects agricultural uses.

6. Buffers

Lands which are adjacent to any of the above which may serve as buffer providing long-term protection to preserve agricultural uses.



The following additional criteria may also be included as minimum eligibility requirements:

Minimum size of sending area

A minimum size for eligibility should be considered; however, it may be beneficial to identify a small enough acreage so as not to exclude some of the smaller, family-operated farms.

Inclusion of non-agricultural lands within the same parcel

Wetlands, forested uplands, hedge rows and property with steep slopes when adjacent to agricultural lands can provide important buffer and watershed protection functions. If the local government elects to only adopt an agricultural TDR ordinance and not include environmental lands, the extent that these lands should be included as part of the overall TDR gross acreage should be considered. For example, it is recommended that a percentage of these non-agricultural lands be permitted to be part of the agricultural TDR gross area as support buffer and be treated no differently than the actual agricultural lands. Generally, it is recommended that no more than 30% of non-agricultural lands be permitted in the TDR gross area calculations. Alternatively, a reduction factor may be used for these adjacent, but non-agricultural lands. Alternatively, if the local government also includes environmentally significant lands in the TDR Ordinance, these buffer areas could be qualified under either designation.

Environmentally Significant Lands

It is recommended that the criteria used to determine Sending Areas should be limited to characteristics associated with the following six (6) major categories of environmentally significant lands.

1. Regionally Important Resources (RIR)

Conservation status of species or ecosystem on a one to five scale

- 1 = critically imperiled
- 2 = imperiled
- 3 = vulnerable
- 4 = apparently secure
- 5 = secure



2. Priority Ecological Communities

Coastal & Estuarine Land Conservation Plan (CELCP)
Southern Coastal Plain Ecological Communities

- Salt Marshes
- Bottomland Forests
- Freshwater Wetlands
- Carolina Bays
- River Corridors and Flood Plains
- Marsh Hammocks
- Barrier Islands
- Maritime Forests
- Long Leaf Pine Forest

3. Other Environmentally Important Areas

- Flood plain protection areas
- Area providing water quality protection for rivers, streams and lakes
- Aquifer recharge areas
- Areas of unique topographical features such as steep slopes, erodible soils and stream banks
- Areas and projects supporting high-priority wildlife and plant species and the preservation, restoration or enhancement of the habitats for State and Federally protected or listed species and other species of critical concern
- Locally and regionally identified conservation priorities

4. Land Adjacent to Environmental, Agricultural and Cultural Resources

- Land adjacent to public lands
 - City and County Parks and recreation Areas., State and National Forests, Wildlife Management Areas, State Parks, National Parks and Monuments, etc
- Land adjacent to Private Land Trusts and Private Conservation Areas
- Land adjacent to CELCP Priority Areas, including upland buffers to wetlands
- Land adjacent to prime agricultural lands
- Land adjacent to cultural sites, archeological and historic resources, heritage corridors, including national, state and local historic sites

5. Land Providing Linkages to Promote Connectivity and Regional Systems

- Land providing connectivity between existing or proposed conservation lands which will contribute toward the creation of:
 - Local and regional greenways, blueways and flyways
 - Wildlife corridors
 - Local and regional trails



6. Creation of Buffers for the Protection of Scenic Resources and Corridors

- Maintain Local and Regional Rural, Natural or Agricultural Character
 - Land to create buffers along rural highways and public roadways
 - Land protecting perimeter of significant viewsheds
- Land identified to protect the views of and from Local, State and National Parks, Seashores, Wildlife Refuges, Recreational Areas, etc, including entry way and approach corridors
- Land identified to protect scenic quality and user experience associated with bikeways, trails, scenic drives and multi-use paths

Cultural Resources

It is recommended that the criteria used to determine Sending Areas should be limited to the characteristics associated with the following six (6) major categories of cultural resources.

1. **Sites Identified on Local, State or National Directories or Registers**
2. **Historic Trails and Roads**
3. **Native American Sites** (Middens, Burial Grounds, etc.)
4. **Lands Surrounding Historic Structures**
(Local, State or National Significance)
5. **Site Identified with Historic Events**
(Battlegrounds, Treaties, Meetings, etc.)
6. **Site with Pre-historic Features**

After adoption of the criteria for determining Sending Areas, the local government will then need to select an administrative method for identifying the actual parcels of land. This can be accomplished either through a mapping process (Option One) defining single or multiple geographic areas or the Sending Areas may be designated on a case-by-case basis (Option Two) in response to submitted applications based on the adopted set of criteria standards, or a combination of both methods.

Option One

Based on the adopted criteria, Sending Areas can be specifically identified and mapped with distinct boundaries, creating designated areas or zone(s) that are eligible for TDR credits. In addition to using the adopted criteria, a particular region(s) can be identified to cluster the preservation of lands to a certain geographic area. For example, a particular region of the jurisdiction may have intense agricultural activity, therefore priority may be given to protect and preserve this defined area before other areas are permitted to use the TDR program. For agricultural lands, the most simplistic approach is to simply use the lands that currently contain a



agricultural land use or zoning, however, this may include lands that may not be functional agricultural lands.

Option Two

Instead of mapping specific TDR Sending Areas, a more general approach will have the local government use the adopted criteria standards on a case-by-case basis to determine eligibility. Land owners and Developers as applicants would submit an application to their local government for evaluation and approval under the established criteria. It is recommended that this review and compliance process be administratively reviewed and approved.

Regardless of the method used for determining Sending Areas, the local government will need to define an administrative process for the review and approval of TDR Sending Areas. Additionally, it will be necessary for the local government to decide whether TDR use is by “right” or whether public hearings and approval by the governing body is required. For example, if all the conditions have been met, then the TDR use could be approved administratively by staff of the Planning or Public Works Department. This process may create additional incentives for TDR Sellers and Buyers by removing the uncertainty and the number of hurdles an applicant must address, thus improving the likelihood of the TDR ordinance being utilized. Regardless of how the TDR process is ultimately administered, it is important to have a clear and understandable process to both identify the Sending Areas and to approve each application.

Optional Provision for TDR Applications in Urban Areas

If the local government decides to allow the designation of both Sending and Receiving Areas in urban areas, the above eligibility criteria for defining Sending Areas for environmentally significant lands and cultural resources can also be followed for the transferring of development rights from one urban site to another. For example, the type of Sending Areas may include land which may be appropriate for public parks and plazas, land with an historical significances, land with unique topographical or vegetative features, trail corridors, etc. The resulting Sending Area property under a conservation easement may continue to be owned by the landowner or may be conveyed to other private or public entities.



Decision Point Number 2

Designation of Receiving Areas

The designation of Receiving Areas should be based on the community's growth management goals and objectives and should include areas that are most favored by the community for accommodating growth. Similar to the designation of Sending Areas, the local community should establish specific criteria for qualifying property as a Receiving Area. It is generally recommended that Receiving Areas be determined based on the presence of existing or planned infrastructure to serve the higher density or more intense development that may be proposed as a result of the TDR.

Receiving Areas should be those areas which are best able to provide the necessary infrastructure such as transportation, schools, water and sewer capacity, police protection, waste disposal, community recreation and other services. If the infrastructure is not present, the property should be located within an area where future infrastructure is part of a forthcoming Capital Improvements Plan or a similar type program directed toward infrastructure improvements.

Having set the baseline criteria for the appropriate infrastructure to be available during the project's planning horizon, the local government can either establish specifically designated and mapped areas (Option One) for Receiving Areas or, alternatively, the Receiving Areas may be designated on a case-by-case basis (Option Two) in response to submitted applications based on the adopted set of criteria, or a combination of both methods.

Based on the infrastructure criteria and the growth management objectives of the community, specific areas may be identified and mapped for designation as Receiving Areas. The following list demonstrates some of the various options local government may consider.

1. Existing Zoning District

TDR Receiving Areas may be limited to lands which are currently zoned for the intended residential or non-residential uses or certain designated portions of those zoned lands.

2. Community Sponsored Economic Development Projects

Local government may designate TDR credits to specific projects which may address local economic objectives. For example, TDR credits may be directed to assist in the development of office, industrial or research and development parks being promoted by the local government or public agencies.

3. Specific Development Zones

TDR credits could be directed to specific geographical areas for the development of mixed use town centers, village centers and other areas identified by the community for growth. For example, the community may designate a mixed use parcel at an interstate interchange as a specific Receiving Area.



4. Other Specific Areas or Projects

Receiving Areas may also be located within designated growth boundaries, urban service districts, urban and rural edges or parcels adjacent to other municipalities (see Decision Point Number Six for discussion of Interlocal Agreement). In addition to specific geographic areas, the TDR program can be used to promote local planning objectives and initiatives such as senior housing, affordable housing or infill development.

Option One

The above described Receiving Areas are very specific relative to geographic locations and can be easily mapped and referenced for lands which are eligible for a TDR development. Local government can then rely on the map atlas in processing the applications.

Option Two

Alternatively, rather than mapping the TDR Receiving Areas, consideration could be given to the use of the above infrastructure criteria and other standards in establishing land eligible for TDR receivership. This may be accomplished on a case-by-case basis by the local government staff as applications are received. The criteria may be based on the existing or planned infrastructure availability and other criteria such as adjacency to employment, shopping or adjacency to existing or planned compatible development.

Optional Provision for TDR Applications in Urban Areas

If the local government decides to allow the designation of both Sending and Receiving Areas in urban areas, the above eligibility criteria for defining Receiving Areas for environmentally significant lands and cultural resources can also be followed for the transferring of development rights from one urban site to another. For example, a site with outstanding specimen live oaks may be identified as a Sending Area to transfer development rights to a Receiving Area which may be directly adjacent to the Sending Area site or may be located elsewhere in the urban area. The Receiving Area may be limited to specific areas or to areas designated for special economic development, otherwise the local government may elect to develop additional criteria for the designation of Receiving Areas throughout the urban area. One such criterion would be to create a maximum distance that the Receiving Area can be located from the Sending Area. This would help establish a direct relationship and benefit between the Sending Area of preserving open space and the Receiving Area of accepting higher density or intensity of development.



Decision Point Number 3

Calculation of TDR Credits from Sending Areas

A TDR “currency” will need to be established in order to assign TDR credits that will be available for transfer from Sending Areas to Receiving Areas. Most commonly, the TDR allocation rate is expressed per acre. The resulting TDR credits become the currency that can be applied to the Receiving Area specific to the proposed residential or non-residential uses. The local government will need to decide the best method for establishing TDR credits based on their local conditions and administration.

The calculation of TDR credits can be based on a variety of methods including the quality of land being preserved, the suitability and limitations of the soils for septic development or location. The most common methods consist of establishing value based on the net acreage of the land actually preserved (Option One) or based on the underlying density allowed by zoning or land use (Option Two). The following options and discussion points should be considered when calculating the TDR credits derived from the Sending Areas.

Option One

TDR credits can be calculated simply based on the net acres of preserved agricultural lands or environmental lands or the area containing cultural resources. For example, one TDR credit could be assigned to each acre or multiple acres of lands preserved under the conservation easement. As discussed under Discussion Point Number 1 regarding designated Sending Areas, if the local government elects to only adopt a agricultural TDR ordinance and not include environmental lands, non-agricultural lands such as wetlands, forested uplands, steep topography, etc, which serve to protect the agricultural activities, may be a different value compared to the agricultural production lands. Additionally, the quality of the agricultural, environmental or cultural resources may be graded and used as a factor in determining TDR credits; however, this can create layers of additional process, administration and appeal.

Option Two

The number of TDR credits granted per acre of eligible Sending Area can be based on the underlying zoning. For example, one TDR credit per five acres of preserved agricultural or long leaf pine lands could be established, assuming that the underlying zoning allows one unit per five acres. In general, where the zoning permits more intense development, an acre of eligible Sending Area is granted more TDR credits. The higher the TDR allocation rate relative to the baseline zoning, the greater incentive the landowner has to sell his property rights. Therefore, the acre allocation rate can be adjusted to establish a bonus applicable specifically for TDR projects above the underlying zoning rights. Consideration can even be given for down zoning the underlying density and allowing the higher original zoning density for calculating TDR credits. This technique further protects rural lands while providing compensation and incentive for utilizing the TDR program. Thus, if the landowners choose to enter into the TDR process, the density that they can transfer reverts back to the original higher density.



Generally for agricultural sending areas, it is advisable for the landowner to retain some area and associated development rights to incorporate existing farm houses and allow some limited future expansion of residential homes as part of continuing to support the agricultural and farming operations.

As with the case of the Designation of Sending Areas, the calculation of TDR credits should be a simple and understandable process and consideration should be given to providing additional incentives and bonuses to encourage lands to be eligible for the TDR program.

Whatever method is chosen, the real value of the TDR credits is established on the receiving end based on determining how the credits will be applied toward increasing development density, use and intensity.

Optional Provision for TDR Applications in Urban Areas

If the local government decides to allow the designation of both Sending and Receiving Areas in urban areas, the above options for the calculation of TDR credits from environmentally significant lands and cultural resources can also be followed for the transferring of development rights from one urban site to another. Since most urban properties contain existing development rights pursuant to the zoning code, the local government should consider to what extent if all or a portion of the unused development rights can be transferred to the Receiving Area. For example, the Sending Area may be approved for six (6) residential units per acres and the TDR Ordinance may allow all or a percentage of the currently approved density to be added to the existing zoning density of the Receiving Area. As described in Decision Number 4, in addition to an increase in density, other types of development rights such as an increase in building height and lot coverage may be transferred to the Receiving Area. The local government will need to develop specific criteria for the allocation of developments available from Sending Areas and this allocation will need to be sensitive to the existing development rights and to the neighborhood of the Receiving Area.



Decision Point Number 4

Allocation of Credits to Receiving Areas

TDR credits can be used in a variety of methods within the Designated Receiving Areas to allow initial development or more commonly to increase the intensity of development within the parcel. The increase is based on using each TDR credit for a corresponding increase over what is currently allowed by the zoning district. A range or maximum amount of increase should also be established.

This increase of development intensity can be applied to any one, or a combination of the following:

- Increase in the density of residential units per acre based on each zoning district's regulations.
- Increase in the amount of square footage allocated for commercial, office or other non-residential development. This can be in the form of square footage per acre, floor area ratios (FAR) or lot coverage.
- Increase in the amount of impervious area.
- Increase of building height limitations.
- Since the TDR program preserves rural open space, the credits may be used to relax open space requirements of the zoning or land development codes in certain situations.
- Adjustments to parking ratios.
- Increase flexibility of the zoning code to allow and encourage mix use development.

As discussed under Designation of Receiving Areas (Decision Point Number 2), credits can be applied to specific areas identified for development where growth is planned. In these cases, the parcel density and intensity may be set artificially low to encourage use of the TDR program.

To encourage the use of the TDR program, the local government may require that all density increases or all other development intensity increases throughout the community, be accomplished through the use of TDR credits, disallowing most other methods.

Optional Provision for TDR Applications in Urban Areas

If the local government decides to allow the designation of both Sending and Receiving Areas in urban areas, the above allocations of TDR credits from environmentally significant lands and cultural resources can also be followed for the transferring of development rights from one urban site to another. Since most urban properties contain existing development rights pursuit to the



zoning code, the local government should consider to what extent if all or a portion of the unused development rights can be transferred to the Receiving Area. For example, the Receiving Area may be allocated up to three (3) additional residential units per acre from the Sending Area (a 50% reduction of the existing density rights) and the TDR Ordinance may allow this density to be added to the currently approved density of the Receiving Area. As discussed previously, the additional development rights may be in the form of density, building height or impervious area increases or other modifications to zoning or development standards. This transfer of various types of development rights can help to promote Smart Growth principals such as public open space, pedestrian circulation and mixed use development. The local government will need to develop specific criteria for the allocation of available development rights from Sending Areas and the application of these rights will need to be sensitive to the existing neighborhood of the Receiving Area.



Decision Point Number 5

Interlocal Agreements

Preservation of agricultural and environmental lands and cultural resources and the efficient allocation of infrastructure resources have a regional benefit and are not specific to a single county or municipality. Recognizing that there are distinct agricultural, natural and cultural areas and there are areas where growth may be best directed that may not lie under the same jurisdiction, an Interlocal Agreement may be helpful to allow a TDR program to cross these jurisdictional boundaries. The Interlocal Agreement would recognize the shared regional policies between the County and incorporated municipalities and promote joint programs to protect and maintain the agricultural character and direct growth to the most appropriate areas. The agreement would authorize incorporated areas to receive development credits from unincorporated lands or districts. The agricultural and environmental lands and cultural resources, as a Sending Area, would retain the existing or proposed use under irrevocable conservation easement or deed restriction. The agreement may also address TDR credits under a rural to rural fringe transfer when located directly adjacent to an incorporated municipal boundary where infrastructure may be available or planned in the near future. The Interlocal Agreement will need to address many of the issues associated in the TDR model ordinance, including the following:

- Identification of which government entity is responsible for the program administration including adoption of policies, regulations and administrative procedures to implement the program which shall promote and facilitate the purchase and sale of TDR credits.
- The County government will need to designate and prioritize the Sending Area sites and the associated TDR credits.
- The municipal government will need to designate and prioritize the Receiving Area sites and develop a process to notify the County when it has accepted the use of TDR credits within a Receiving Area. Coordination will be required to confirm that the proper deed restrictions and conservation easements have been recorded before acceptance of the TDR credits and subsequent issuance of zoning orders or the building approvals.
- The County should jointly, with the municipality, publish an annual report providing a full evaluation of the program and recommendations for improvement.

Optional Provision for TDR Applications in Urban Areas

If the local government decides to allow the designation of both Sending and Receiving Areas in urban areas under the same jurisdiction, an Interlocal Agreement would not be necessary or would not be applicable.



Other Considerations

Advisory Committee

The TDR Ordinance should be based on the local community's physical characteristics and political and economic conditions. One option to insure that there is full consensus from all the effected stakeholders is to create a Citizens Advisory Committee or Task Force. This Advisory Committee, which could be led by a Planning Consultant, should be comprised of representative business leaders, local residents, landowners and farmers, environmental and cultural organizations, developers and builders, elected officials, governmental agencies and staff and an economic consultant. The Advisory Committee, through a series of meetings and workshops, can create a community based TDR Ordinance which can be recommended for approval by the local government.

Administrative Activities

As described in Section 14 of the Model TDR, it is important for the local government to create a management program to administer, monitor, market and provide information regarding the TDR program. Monitoring and the preparation of the annual report can be used to evaluate how well the TDR program is working and provide the data necessary to adjust the program when necessary. Additionally, part of the administrative activity should include an educational and informational marketing initiative to assist in promoting the TDR program to developers and landowners. Information on how the TDR credits program operates with answers to frequently asked questions should be easily available to interested parties.

Incentives and Mandates for Using TDR Credits

To encourage TDR activity, the use of TDR credits for the increase of development rights should be the preferable process for developers to use in terms of time, cost and assurance of approval. If developers are allowed to easily increase the baseline density or obtain other zoning concessions within receiving areas other than utilizing the TDR program, there is little incentive to incur the cost of purchasing TDR credits to receive additional development rights. In some cases, it may be beneficial to consider using TDR credits as the only means for increasing density or development rights. If existing zoning density and rights are set close to what the market will bear, there may be little demand for TDR without down zoning. The establishment of low baseline development rights in specific areas identified for development and growth and requiring that all development in those areas utilize TDR credits is one method to encourage participation in the TDR program.

Market Conditions

The price of TDR credits or development rights are determined on the private market between the buyer and seller and will fluctuate as the demand for TDR credits change. The value is most directly related to the conversion to the final development rights which the developer will obtain for



use within the Receiving Areas. TDR programs are closely tied to local zoning and market conditions, therefore, an understanding of land values and development potential related to zoning is essential to design an effective program. Planning exercises may include a full built-out analysis to forecast future growth and land use patterns. For any TDR program to be successful there must be both a healthy supply and demand for development rights and the interested parties must be able to trade at some mutually agreed-upon price.

TDR Credit Banks (Recommended)

The minimum level of local government involvement in a TDR program can be land to simply administer, direct and approve the TDR transactions and monitor the conservation easement, or it can even enter the market as a buyer. Another element that can enhance the program is the creation of a TDR credit bank, which could be administered by a third party, administered jointly or entirely by the local government.

A TDR credit bank can enhance the TDR program by facilitating purchases and sales reducing transaction coordination and costs between participants. The bank enables both landowners and developers to sell and buy directly from the bank. The bank can be controlled by a third party organization that is empowered to negotiate the value development rights and sell them. The third party entity can be a non-profit group who currently operates in the area or the local government may create a partnership with a local non-profit land trust or similar conservation organization. Alternatively, the local government may establish and administer a TDR bank.

The bank which is funded by government or other or entity(s), purchase development credits from landowners. The bank enables the developers to buy TDR credits directly from the bank from which the bank can then take the proceeds from the sale of TDR credits and buy additional TDR credits from farmers. After the initial funding, a revolving funding program can be established. The TDR Credit Banks makes it easier for landowners and developers to find each other and provides a central source for establishing prices that may otherwise fluctuate a great deal across individual sales and over time which can discourage landowners from participating or lead them to hold their TDR credits waiting for higher prices.

Optional model legislation for creating a TDR Credit Bank which would become part of the TDR Ordinance follows.



**OPTIONAL MODEL LEGISLATION FOR CREATING A BANK WITHIN A
TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE**

Sec. [#]-# TRANSFER OF DEVELOPMENT RIGHTS BANK.

Subsequent to the adoption of this ordinance, [NAME] County [City] may create a Transfer of Development Rights Bank ("the Bank") to encourage the exchange of development rights in the private market and encourage the preservation of land. The Bank will facilitate the exchange by purchasing and selling development rights. Also for the purposes of conserving land, the Bank may hold TDR credits for any length of time to include in perpetuity.

Sec. [#]-# ORGANIZATION OF THE BANK.

The Bank shall be directed and managed by a Bank Board to consist of 5 members who shall be residents of [NAME] County [City], nominated by the Department and approved by the [NAME] County Board of Commissioners [Mayor and City Council]. Specifically, one member shall be experienced in the banking or financial industry, one member shall be a private landowner, one member shall be experienced in the legal industry, one member shall represent a conservation organization, and one member shall be a representative from the real estate development industry. The terms of office for the Bank Board members shall be four years and staggered.

Three (3) members shall constitute a quorum. A majority vote shall be required for any action before the Bank Board.

The Bank Board may adopt procedural and substantive rules to govern its powers, duties and functions. Staff support shall be provided by the Department.

Empowerments. The Bank Board shall be empowered to:

- (a) Enter into agreements for professional services, e.g. consulting, appraising, accounting, subject to available funding;
- (b) Apply for and accept grants or loans for the Bank Board's authorized purposes;
- (c) Purchase, receive, sell or hold TDR credits;



- (d) Purchase properties in fee simple to preserve them through conservation easements and resell the restricted properties at fair market value; and do all other things necessary to carry out the functions and operations of the Bank.

Authority and Compensation. The members of the Bank Board shall receive no compensation from the Bank except reimbursement for expenses incurred for the performance of their duties as Board members.

Registry of TDR credits. For the purposes of tracking and marketing transfer of development rights, a central registry of available Transfer of Development Rights Certificates shall be established by the Bank or the Department in the event the Bank is not established.

Acquisition Priorities. The following priorities shall be considered by the Bank Board for purchasing TDR credits:

- (a) Properties adjacent to existing permanently preserved agricultural and environmental lands and cultural resources;
- (b) Development pressures on the land;
- (c) Price of the development rights;
- (d) Pre-existing perpetual restrictions against development;
- (e) Proximity to other properties with easement restrictions for the purpose of creating large, contiguous tracts of conserved land;
- (f) Environmental assessments; and
- (g) Other factors of public interest determined by the Bank Board.

Purchase, Sale and Value of TDR credits. To determine purchase and/or sales price of development rights, the Bank Board may negotiate, use a competitive bid process, or any other method deemed fair and equitable by the Bank Board.

Purchase and sale prices must be supported by an appraisal paid for by the Bank Board.

Any eligible landowner may approach the Bank Board with an offer to sell TDR credits. The Bank Board shall have 60 days to consider and respond to such offers.

Landowners shall follow the procedures and requirements for certification of TDR credits as prescribed by this ordinance.



All transactions through the Bank Board must follow the recordation requirements prescribed by this ordinance.

The Bank Board may, as a preservation measure, acquire fee simple interest in sending area parcels on a competitive basis in the open market.

The intent of a purchase is to place a perpetual conservation easement on a property and then resell the restricted parcel for fair market value.

Purchase and resale of sending area parcels is limited to those parcels where development pressures or the prospects of a change of the use of the property are high and/or whose location and/or quality are such that the property's preservation is important to the continued viability of the resource in [NAME] County.

Right of First Refusal. The Bank Board shall have the authority to enter into Right of First Refusal Agreements with sending area landowners for the purchase of either TDR credits or property in fee simple.

The Right of First Refusal Agreement is an instrument that is recorded in the chain of title for the subject property, and is to be effective concurrent with the ownership of the signer(s) of the agreement and to be renewed by immediate family members who may become successive owners.

In the event that all or a portion of the TDR credits or property may be sold to someone other than an immediate family member or developed or subdivided, notification by the landowner to the Bank Board shall be required.

Within 90 days of notification, the Bank Board may exercise the right of first refusal by acquiring either the development rights or the property in fee simple at a price which is equal to any bona fide offer which has been tendered to the landowner or the appraised fair market value, if an offer has not been tendered, plus \$1.00.



Planned Resource Districts (PRD)



Planned Resource Districts

Introduction

The Model Planned Resource District Ordinance (“Model PRD”) has been developed for application within the ten (10) counties and thirty-five (35) municipalities served by the Coastal Regional Commission (CRC) to implement *The Regional Plan of Coastal Georgia* (the “Plan”). The coastal Georgia region encompasses six coastal counties and four inland counties and has a total land area of over 5,110 square miles (the “Region”).

This Model PRD allows landowners to develop parcels by positioning and clustering development within appropriately defined parcels, while protecting the balance of property. PRDs should be used as part of an integrated growth management strategy, which includes other options to protect significant lands and cultural resources such as the Purchase of Development Rights (PDR) programs, Transfer of Development Rights (TDR) program and other similar techniques.

The Model PRD is recommended to be implemented in its entirety. However, parts of the Model PRD may be incorporated with existing land development codes to strengthen the form of development, increase sustainability, preserve agricultural and environmental lands and cultural resources, and provide incentives to ensure greater consistency with comprehensive plans. As part of the adoption process, the local government should first decide if all or which of the three resources should be included in the PRD Ordinance.

Background

The Plan identifies a number of Issues and Opportunities and a framework to encourage sustainable policy and planning practices for development outcomes in the coastal Georgia region. Specifically, the Plan’s Regional Growth Management, Intrinsic Resources: Natural, Intrinsic Resources: Cultural and Historic, Agricultural Lands and Business and Industry Issues identify Guiding Principles, Strategies and Performance Standards that provides the implementation measures required to attain “quality growth” outcomes within the 20-year planning timeframe of the Plan. This Model PRD is one of the implementation options designed to fulfill these requirements.

The Model PRD was tasked to include the following development objectives and provisions:

- Allow for conservation-based developments in rural areas;
- Provide planning principles that will protect large and contiguous significant resource lands;
- Allow the development of clusters of homes in areas where resources will be protected in perpetuity.

This Model PRD provides the regulatory guidance for communities in the Region to adopt land use and development standards as well as an accompanying review and approval processes that satisfy initiatives identified in the Plan.

A PRD may be established after application by a landowner and approval by the local



government. The Model PRD contains recommended development standards as a starting point for local governments to consider when calibrating the Model PRD for adoption. The Model PRD allows for the incorporation of development standards that are optimal for specific development projects and/or jurisdictions. Additionally, the *Coastal Georgia Regional Character Design Guidelines* provides additional contextual guidance to ensure new developments are compatible with their surroundings and contribute to the heritage of a community and the built environment.

PRDs require deliberate locational evaluation to ensure the integrity of non urban areas are maintained. A PRD growth management technique is not intended to allow the gradual transitioning of urban or suburban uses into non urban areas. PRDs are an option for local governments to allow for limited development outside the defined urban area (i.e., areas not served and not intended to be served by urban services).

The PRD should be density neutral; meaning the resulting development yields the equivalent amount of lot(s) when compared with the yield permitted under the existing zoning classification. Increases in yield may be permitted if development is able to incorporate incentives as outlined in the Model PRD Ordinance and approved by the local government. The PRD offers greater flexibility and better outcomes as an alternative to the typical 2-, 5-, and 10-acre estate lot development which are increasing in non urban areas throughout the Region.

The PRD is not intended for application within existing or planned urban areas. The PRD is a growth management technique which is utilized to primarily protect a range of significant lands and cultural resources, while allowing for limited development which implements policy and planning practices consistent with the Plan and local city and county comprehensive plans.



Planned Resource Districts (PRD)

Model Ordinance

**MODEL PLANNED RESOURCE DISTRICT ORDINANCE [RESOLUTION]****Sec [#]-1 PURPOSE AND INTENT.**

These regulations shall officially be referred to as the Planned Resource District Ordinance [Resolution] for the county [city]. The Planned Resource District (PRD) is intended to provide limited residential and neighborhood commercial development that reflects sustainable planning practices to protect agricultural and environmental lands and cultural resources. It is not the intent to create development zones for the future expansion of urban services.

The purpose of the PRD are as follows:

- (a) To preserve the unique character of places through the permanent preservation of agricultural and environmental lands and cultural resources;
- (b) To allow development that permanently preserves agricultural and environmental lands and cultural resources;
- (c) To allow for limited development in non urban areas;
- (d) To allow limited development in areas where urban services will not be extended;
- (e) To allow flexibility in the placement and type of dwelling units within the developments;
- (f) To promote the use of efficient community wastewater, water and stormwater systems that prevents the degradation of water quality and natural resources;
- (g) To reduce the amount of impervious surfaces in developments, including roads, sidewalks and driveways.

[See Decision Point Number 1]

Sec [#]-2 SIZE AND COMPOSITION.

A PRD shall be composed of two distinct areas: the Legacy Area and the Community Area. The total PRD shall be contiguous in location and configuration provided that roads, utility easements or other similar features may divide the site. The PRD shall be configured in such a manner to protect the resource within the Legacy Area.

- (a) The minimum size of development in the PRD is forty (40) acres.
- (b) A development of over twenty (20) but less than forty (40) acres may apply for approval under this Ordinance [Resolution] if the development meets all the requirements for a PRD, plus the following additional requirements:
 - (i) The visual impact of the development from adjacent roadways, residences, agricultural and environmental lands and cultural resources is



mitigated through additional landscaping/buffers which complements the prevailing landscape;

- (ii) The maximum allowed gross density is one (1) dwelling unit per ten (10) acres and cannot exceed four (4) total dwellings units for the entire development; and,
- (iii) Parcels of record as of the effective date of this Ordinance [Resolution] less twenty (20) acres in size cannot be further subdivided or split in order to create a PRD.

[See Decision Point Number 2]

Sec [#]-2.1 Legacy Area. The Legacy Area in the PRD is generally comprised of large connected areas that have characteristics and uses on the property that reflect the protected agricultural lands, environmental lands or cultural resource. The Legacy Area shall not be part of any individual residential lot(s) or other portion of the Community Area. It shall be substantially free of structures, but may contain historic structures and archaeological sites including Indian mounds and/or such recreational facilities for residents as indicated on the approved development plan. The protected resources, activities and operations necessary to maintain the functional characteristics or importance of such landscapes within the Legacy Area may continue.

- (a) PDRs shall demonstrate how the identified resources will be protected, preserved or enhanced prior designation of the Legacy Area; and
- (b) The Legacy Area shall be designated as permanent preservation lands through a conservation easement that is held in perpetuity as defined by Georgia Statutes. Allowed uses shall be identified in the easement recorded in the Official Records of [NAME] County.

[See Decision Point Number 3]

Sec [#]-2.2 Community Area. The Community Area is comprised of all land in a proposed PRD that is not designated part of the Legacy Area. Development within the Community Area shall be clustered and transition away from the boundary of the Legacy Area to ensure compatibility with the protected resources and adjacent property. The allowable gross density in PRD and the relative size of the Legacy Area and Community Area shall adhere to the following standards, as identified in Table 1:



Table 1
Residential Density Standards

Legacy Area	Permissible Density of Community Area
80%	1 DU per acre of Community Area
85%	1.5 DU per acre of Community Area
90%	2.5 DU per acre of Community Area

Gross density for all development allowed under this Ordinance [Resolution] shall be calculated by subtracting areas that are defined as the Legacy Area from the total acreage of the parcel(s). Next, multiply the resulting Community Area acreage by the density standard listed above that corresponds with the acreage of the Legacy Area. Any calculation resulting in a fraction of a dwelling unit shall be rounded down to the nearest whole dwelling unit.

Example: 83-acre Parcel

Legacy Area: 74.7 acres (90% of site)
 Community Area: 8.3 acres (10% of site)
 Density standard: 2.5 DU per acre
 $(8.3) \times 2.5 = 20.75$ Dwelling Units
Gross Density: 20 DU (20.75 rounded)

[See Decision Point Number 4]

The gross density may be increased if the PRD complies with one or more of the following four (4) conditions. Each condition provides a density bonus of 5%, in addition to the gross density. The maximum bonus permitted is 20%.

- (a) Creating an endowment where the principal would generate sufficient annual interest to cover the conservation easement holder's yearly costs (taxes, insurance, maintenance, enforcement, etc.).
- (b) Providing for shared or community drain fields for septic systems.
- (c) Providing affordable housing, to include a minimum of 25% of all units that would be affordable to moderate-income households, as defined by the U.S. Department of Housing and Urban Development.
- (d) Reusing historical buildings and structures, including those sites inventoried by the Georgia Department of Archives and History. The U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Properties shall apply.

Example: 83-acre Parcel

Legacy Area: 74.7 acres (90% of site)

Community Area: 8.3 acres (10% of site)

Density standard: 2.5 DU per acre

Two bonus standards (10% bonus)

Bonus density standard: 2.75 DU per acre

$$(8.3) \times 2.75 = 22.825 \text{ Dwelling Units}$$

Gross Density: 22 DU (22.825 rounded)

- (e) PRDs containing more than one hundred (100) dwelling units may also include neighborhood-scale commercial uses within the Community Area. The maximum size of a commercial parcel is three (3) acres. The maximum floor area ratio (FAR) of the neighborhood-scale commercial uses is 0.175. If neighborhood-scale commercial uses are to be included, the Community Area's permissible density shall be calculated by reducing the total Community Area by the acreage contained within the neighborhood-scale commercial parcel. The remaining acres are then multiplied by the appropriate density standard.

Example: 800-acre Parcel

Legacy Area: 720 acres (90% of site)

Community Area: 80 acres (10% of site)

Commercial Area: 3 acres

$$(43,560 \text{ sf/ac} \times 3 \text{ ac} \times 0.175 = 22,869 \text{ sf})$$

Density standard: 2.5 DU per acre

$$((80 - 3) = 77) \times 2.5 = 192.5 \text{ Dwelling Units}$$

Gross Density: 192 DU (192.5 rounded)



Sec [#]-2.2 Buffers. Within Community Areas, a vegetative buffer an average of 25 feet wide shall be maintained around open water areas, unless a specific common beach or grassed area is identified. Also, a perimeter buffer at least 50 feet wide shall be maintained along all sides of the Community Area. This 50-foot perimeter buffer may consist of wetlands and other similar areas. Uses within the perimeter buffer shall be limited to those associated with passive recreation. The perimeter buffer areas shall be appropriately planted with native grasses and/or shrubs and trees. At the discretion of the [NAME] Department, roads may be substituted for a portion of the perimeter buffer if the road creates an effective barrier separating yards from agricultural uses.

Sec [#]-3 SITE DESIGN.

Individual lots are not required to meet a minimum lot size and shall be clustered to provide for a compact Community Area, unless specifically required by [NAME] County Health Department. Lots and building sites shall be designed to achieve the following objectives listed in order of priority:

- (a) Siting individual and community septic systems on the most suitable soils for sub-surface septic disposal;
- (b) Siting lots and building sites on the least productive soils for agricultural uses, and in a manner which maximizes the usable area remaining for such agricultural use;
- (c) Siting development area to minimize the impact on protected resources and to maximize the amount of contiguous resource land;
- (d) Siting development areas within the least productive agricultural lands and lower quality undeveloped lands or within areas not suitable for agricultural purposes such as along the edges of fields and adjacent to woodlands as a means to further reduce the impact on agriculture and to enable buildings to be visually screened by the landscape; and
- (e) Siting buildings to minimize obstruction or interrupt scenic vistas as viewed from roads and from other locations on the property.

[See Decision Point Number 5]

Sec [#]-3.1 Utilities. Individual well and septic systems are allowed in PRDs; however, common utilities (i.e., water and/or sewer or septic systems) are encouraged. Common utilities shall meet the requirements of the State of Georgia standards for sewage treatment systems and be approved by the [NAME] County Health Department, including the following standards:

- (a) Community drain fields for shared septic systems may be partially or completely located in Legacy Areas, provided that:
 - (i) The dedicated parcel containing the communal drain field is owned in fee simple by the home owner or property owner association which owns non-



- Legacy Area land within the development and in which membership in the association by all landowners in the development shall be mandatory;
- (ii) The common home owner or property owner association is responsible for maintenance and repair of the community drain field;
 - (iii) The ground cover is restored to its natural condition after installation;
 - (iv) Recreational uses are prohibited within fifty (50) feet of communal drain fields; and
 - (v) The conservation easement describes the location of the communal drain field.
- (b) To ensure protection of ground and surface waters in the Legacy Area, PRDs that do not utilize community systems must provide through the home owner or property owner association covenants, conditions and restrictions (CC&Rs) a requirement of maintenance to individual wastewater systems by a qualified and licensed operator and regular inspections.

Sec [#]-4 OWNERSHIP AND MANAGEMENT.

All lands and improvements within the Legacy Area shall be established, managed and maintained in accordance with the following guidelines:

- (a) The Legacy Area shall be surveyed and subdivided as a separate parcel or parcels;
- (b) The type of resource to be preserved shall be identified and managed to ensure long term protection, preservation and/or conservation said features on the property;
- (c) The following areas or structures may be located within the Legacy Area and shall be counted toward the overall proportion required:
 - (i) Privately-owned buildings or structures provided they are accessory to the use of the Legacy Area; and
 - (ii) Community septic and shared potable water systems.
- (d) That portion of the Legacy Area designed to provide plant and wildlife habitat shall remain as contiguous as practicable.
- (e) Areas within the Legacy Area shall be restricted from further development by a conservation easement (in accordance with Georgia Uniform Conservation Easement Act) and contain a provision indicating that the easement runs with the land and may not be terminated except as provided for in this Ordinance [Resolution]. The conservation easement must be submitted with the preliminary site plan and approved by the Board of Commissioners [Mayor or City Council] or its designee.

Sec [#]-4.1 Conservation Easement Holder. The conservation easement may be held by the following entities, but in no case may the holder of the conservation easement be the same as the owner of the parcel:

- (a) Home owner or property owner association;



- (b) The county [city] or other governmental body authorized to hold an interest in real property;
- (c) A private, nonprofit conservation organization that has been designated by the Internal Revenue Service as qualifying under section 501(c)(3) of the Internal Revenue Code; or
- (d) An individual or entity who will use the land for open space purposes as provided by a conservation easement.

Sec [#]-4.2 Conservation Easement Provisions. The conservation easement must specify the following information:

- (a) Restrictions on that portion of the property included in the conservation easement shall include, but not be limited to the following:
 - (i) Property shall not be divided into parcels less than 40 acres in size, unless the parcel is already under 40 acres in size;
 - (ii) The construction of residences for new owners of any divisions shall be prohibited;
 - (iii) Construction of any other buildings, unless they are built for uses consistent with resource being protected shall be prohibited;
 - (iv) Commercial or industrial activity that is inconsistent with the resource being protected shall be prohibited; and
 - (v) Excavation of topsoil, sand, gravel, rock, minerals or other materials that significantly impairs or interferes with the value of the property shall not take place without prior written approval of the Board of Commissioners [Mayor and City Council] or its designee.
- (b) Permitted uses and retained development rights in the conservation easement shall include, but not be limited to, the following:
 - (i) Construction of buildings necessary for and consistent with the allowed uses and activity of land.
 - (ii) The right to construct additional residences essential to the ongoing maintenance or operation of the resource are permitted. All structures built must be in conformance with all applicable federal, state and local laws, ordinances and regulations;
 - (iii) The right to maintain, renovate, add on to, or replace existing structures. All structures built must be in conformance with all applicable federal, state and local laws, ordinances and regulations; and
 - (iv) The right to sell, mortgage, bequeath or donate the property, provided any conveyance will remain subject to terms of the easement.
- (c) In addition to the provisions of the Georgia Uniform Conservation Easement Act, each conservation easement shall contain, but not be limited to, the following:
 - (i) Metes and bounds written legal description and plat prepared by a licensed surveyor;
 - (ii) Restrictions and permitted uses of the property;
 - (iii) Assurances that prohibitions will run with the land and bind the landowner and every successor in interest to include a statement that the



conservation easement shall survive any merger of the easement interest and the fee simple interest of the property; and

- (iv) A statement that nothing in the conservation easement shall be construed to convey to the public a right of access or use of the property and that the landowner of the property, his heirs, successors and assignees will retain exclusive right to such access or use subject to the terms of the conservation easement.

Sec [#]-5 **ALLOWED USES.**

Sec [#]-5.1 **Permitted Uses.** The following uses are permitted in the PRD:

- (a) Agriculture, including farm dwellings and agricultural related buildings and structures including aquafarming and algae farming or similar uses subject to State of Georgia pollution control standards, but not including confined animal feeding operations (CAFOs) or other similar intensive commercial agriculture operation;
- (b) Neighborhood-scale commercial;
- (c) Public parks, recreational areas, wildlife areas and game refuges;
- (d) "Green" industry including solar farms and wind turbine fields or similar uses;
- (e) Single family detached dwellings (maximum height of 35 feet);
- (f) Attached residential dwellings, no more than 5 units per building (maximum height of 35 feet);
- (g) Boarding (house) home / foster children. Restricted to serving six (6) or fewer persons (maximum height of 35 feet);
- (e) Day care home, restricted to applicable local and Georgia Department of Human Resources law; and
- (f) Private recreational vehicle (RV) parks with or without primitive campgrounds.

Sec [#]-5.2 **Accessory Uses.** The following accessory uses are permitted in the PRD:

- (a) Private garages, parking spaces and car ports for licensed and operable passenger cars and trucks not to exceed a gross capacity of nine thousand (9,000) pounds. Private garages are intended for use to store the private passenger vehicles of the family or families resident upon the premises, and in which no business, service or industry is carried on;
- (b) Parking of recreational vehicles and equipment;
- (c) Accessory uses in side yards shall be limited to garages and carports only;
- (d) Accessory buildings are permitted in any rear yard.
- (e) Home occupations in accordance with other local regulations.
- (f) Noncommercial greenhouses and conservatories;
- (g) Swimming pool, tennis courts and other recreational facilities which are operated for the enjoyment and convenience of the residents of the principal use and their guests;
- (h) Tool houses, sheds and similar buildings for storage of domestic supplies and noncommercial recreational equipment;



- (i) Fencing, screening and landscaping as permitted and regulated by other local regulations;
- (j) Boat houses, piers and docks; and
- (k) Signs pursuant with adopted land development regulations.

Sec [#]-6 APPROVAL PROCEDURES.

Sec [#]-6.1 Pre-Application Requirements. A pre-application meeting with the [NAME] Department is required to discuss the application process, resource protection goals and standards, proposed development ownership arrangements for land and/or structures, conservation easement and the perpetual management and ownership of Legacy Area.

Sec [#]-6.2 Conceptual Plan. After the pre-application meeting, the applicant shall submit a conceptual plan and text that contains:

- (a) Base mapping at a scale of 1" = 100' (one inch equals 100 feet);
- (b) A mapped resource inventory that includes:
 - (i) Topographic contours at 10-foot intervals;
 - (ii) Soil type locations and identification of soil type characteristics such as agricultural capability, and suitability for wastewater disposal systems;
 - (iii) Hydrologic characteristics, including surface water bodies, floodplains, wetlands, natural swales and drainage ways;
 - (iv) Vegetation present on the site according to cover type (pasture, woodland, etc.) and vegetative type (classified as generally deciduous, coniferous or mixed), and described by plant community (such as the Georgia Department of Natural Resources types), relative age and condition, also noting trees with a caliper of more than eighteen (18) inches; and
 - (v) Current land use including all buildings and structures.
- (c) A site analysis that identifies and locates:
 - (i) The Legacy Area, including agricultural and environmental lands, and cultural resources;
 - (ii) Special or unique views and vistas;
 - (iii) Contiguity with adjoining agricultural and environmental lands, and cultural resources;
- (d) Net developable acreage and allowed gross density;
- (e) Street and open space concept;
- (f) Street sections;
- (g) Building setbacks;
- (h) Parcel lines and building placement concepts for primary and accessory buildings;
- (i) Natural resource and tree protection plan;
- (j) Landscape plan;
- (k) Utility easements; and



Sec [#]-6.3 Plan Approval. Pursuant to the [NAME] Department finding the has application complete and accurate, the proposed PRD shall be submitted for review by the [NAME] Planning Commission and approval by the Board of Commissioners [Mayor or City Council] or its designee.



Planned Resource District

Discussion of Key Decision Points

A local government should clearly define Planned Resource Districts (PRD) as a growth management tool that can contribute to improved development outcomes, resource protection and minimize the fiscal impacts of growth for local governments by allowing limited development to specific locations in the community. The PRD will result in the reduction of individual septic systems in favor of more efficient community systems; provide for the protection of agricultural and environmental lands and cultural resources without public subsidy; reduce the amount of new road construction and maintenance, and improve the outcomes of new development by enhanced site planning and the incorporation best management practices and land stewardship. The following five (5) decision points should be considered by local governments when evaluating and calibrating the Model PRD for their community:

1 - Identify the Intention

What is the intent? Is a PRD a transition zone between non urban and urban areas or is it an option for development in non urban areas that contain significant lands and cultural resources?

2 - Project Size

What is the minimum size of a PRD?

3 - Legacy Area Characteristics

What are the qualities and characteristics of agricultural lands the community is trying to protect and preserve through PRD? Does a proposal need to have all of those criteria or just some of them?

4 - Density Bonus

Should the PRD be density neutral? If a density bonus is offered, is it awarded only if certain conditions are met or is it an incentive to encourage better development outcomes?

5 - Development Envelope

Should the PRD have typical zoning regulations (i.e. minimum lot size, setbacks, parking, etc.) or allow developer to maximize open space with greater flexibility with the Community Area?



PRD Decision Point Number 1

Identifying the Intention

The long-term success of a PRD lies with permanently protected resources which are part of the development and placed under a perpetual conservation easement. If the restrictions on future development are not permanent, development of those areas could occur with future land and zoning changes. Conservation easements are a tool that has been specifically authorized in Georgia to provide permanent protection of resources. The conservation easement must be held by a separate entity from the underlying fee simple landowner, home owner or property owner association. The conservation easement holder is responsible for monitoring the easement lands to ensure development does not occur and to enforce the conditions of the easement.

PRD Decision Point Number 2

Project Size

In the case of this Model PRD Ordinance, the intent is for PRDs to be implemented on lands greater than 40 acres in size in order to support ongoing agricultural land operations and to allow clustered site design and efficient development on a portion of the property. Forty (40) acres is suggested as a minimum size requirement, so small farms are not eliminated from utilizing this growth management technique. It is important to note however, some other jurisdictions require a 100-acre minimum parcel size or larger. The minimum size of the development must be large enough to allow for creative site design and the protection of agricultural and environmental lands and cultural resources. If the minimum parcel size is smaller than 40 acres, the level of protection and viability of the protected resources may be significantly reduced.

Another alternative would be for the local government to designate a portion of their community as a PRD, much like urban redevelopment areas or special overlay districts are pre-designated and common to many jurisdiction throughout the country.

After establishing a minimum size for PRD developments, there will be some landowners that do not wish to develop in the manner required by the PRD. The PRD Model Ordinance allows one single-family residence on each parcel of record that does not meet the minimum size for a PRD development. In effect, this is similar to applying the Planned Resource District as an overlay designation to lands classified by the comprehensive plan having a density of one dwelling unit per twenty (20) acres. Twenty acres is suggested because the pattern of development that will result from a build-out at this density will still retain agricultural and rural character and minimize the impact on the local agricultural economy.



PRD Decision Point Number 3

Legacy Area Characteristics

The Model PRD Ordinance could be calibrated to include specific criteria that must be met in order to be eligible for PRD approval, such as:

1. Lands which include prime agricultural soils as mapped by the National Resources Conservation Service (NRCS), regardless of the current usage.
2. All other existing or historically active agricultural lands, including cropland and pasture.
3. Other specific agricultural uses, including orchards, groves and nurseries.
4. Livestock feeding operations, including chicken, cattle, dairy and swine.
5. Lands that are currently designated by an agricultural land use or zoning code regardless of actual use or characteristics.
6. Lands which are adjacent to any of the above which may serve as buffer providing long-term protection to preserve agricultural uses.

To encourage the Legacy Area's composition be made primarily of agricultural lands, the PRD Model Ordinance recommends not more than 30% be composed of non-agricultural lands. This proportion will assure that the Legacy Area is primarily agriculture while at the same time not discounting the valuable role important buffer and watershed protection functions such as floodplains, wetlands, forested uplands, and hedge rows serve in making certain agricultural lands are separated from incompatible uses.

PRD Decision Point Number 4

Density Bonus

A straightforward approach is to require the PRD be density neutral. That means, the PRD would contain the same number of dwelling units that could be built in a conventional subdivision under the existing zoning designation. Conventional lot-by-lot subdivisions spread development evenly throughout a parcel without the incorporation of the opportunities and constraints provided by environmental or cultural features. There is a demonstrated need to incentivize landowners and developers to design their subdivisions in a way that maximizes the protection of agriculture and environmental lands and cultural resources without reducing the potential development yield. The PRD Model Ordinance offers a density bonus, if certain conditions are met, to further encourage the site planning and design elements of PRD developments. Some local governments' comprehensive plans may contain policies on density bonus programs of one type or another that could be used instead. The ability to gain additional development potential with the same or lower infrastructure costs in return for better, more sustainable development is oftentimes the most successful measure to encourage developers to exceed typical land development practices. There may be other incentives that are appropriate for the local government which may be included in the PRD Ordinance.



PRD Decision Point Number 5

Development Envelope

As opposed to conventional zoning, the Model PRD Ordinance allows for the development area (i.e., Community Area) to be designed and planned without the use of rigid and cookie-cutter site development engineering and subdivision regulations. As the vast majority of the parcel is permanently protected in the Legacy Area, the developer and the local government has greater flexibility to design the development.



Appendix A to Model Subdivision Regulations: The TDR Ordinance
Smith, Currie & Hancock LLP

A transfer of development (“TDR”) ordinance allows an owner of one parcel of land (a “sending parcel”) to sell his right to develop his property to someone who wants to use those rights to develop another parcel (the “receiving parcel”). The owner of a sending parcel signs an enforceable agreement giving up the right to develop a specified amount of his own property, and sells credits for that amount of development to someone else. Such transfers concentrate development in the receiving parcel. Properly used, TDR’s are a powerful tool for transferring development from specified sending areas, into other areas that are deemed appropriate for growth. A jurisdiction establishes rules for transferring development credits in a TDR ordinance.

A TDR ordinance can be written to encourage the transfer of development rights away from areas that contain specific natural or man-made resources. Georgia’s Coastal Regional Commission (CRC), working with Prosser Hallock in Jacksonville, Florida, has drafted a TDR ordinance that allows owners in areas that contain agricultural lands to sell their development credits to owners in designated receiving areas, in order to preserve prime agricultural lands from development. CRC’s ordinance can be adapted to protect lands that support significant populations of coastal plants and animals, or rivers, wetlands, or other natural, historic, or cultural features that contribute significantly to the way of life on the Georgia coast. This Appendix explores how CRC’s TDR ordinance can be used with the Model Subdivision Regulations to guide growth in a way that preserves these important coastal Georgia resources.

A. Background of the TDR Ordinance

Efforts to protect significant environmental resources are often more successful in a single large area, than in several smaller areas that contain the same type of resources, because the interior of a large area can more effectively protect and buffer resources from development pressures. Further, large areas are more likely to have the diverse resources



that help to support viable, diverse populations or habitats. When several large areas are linked by corridors of undisturbed land, the exchange of species between the areas can further diversify and strengthen all of the areas. Thus, even relatively small riparian corridors, and other small natural areas that provide linkages between larger resource areas, may be appropriate designated as sending areas.

A TDR ordinance can help protect areas of resources, by allowing sales of development credits away from such areas. Each development credit transferred away from a sending area reduces development pressure on that area. Thus, a TDR ordinance can become an investment in the long-term vitality of a jurisdiction's significant resources. CRC has developed two other ordinances that may also be very useful in protecting designated sending areas, providing for a Planned Resource District and for Purchase of Development Rights.

An investment in environmental resources requires time and effort, however, and a jurisdiction or region should ask whether such an investment is justified. Three principle reasons support that investment. First, a region's economy and quality of life depend on "environmental services." Coastal fisheries and tourism, for example, are supported by the resources of a healthy inland ecosystem. Undirected growth tends to fragment and undermine these kinds of resources, leading to their eventual loss or deterioration, which reduces the quality of life for those who used the resources. Second, when a city or county loses a needed natural resource, such as a natural supply of pure water, the resource may be irreplaceable or its replacement may require considerably more expensive, man-made infrastructure to supply that resource. Finally, cost studies show that residential development frequently costs a county or municipality more, in public services, than the taxes and revenues derived from that development. Agricultural and other "working" lands, however, typically produce more revenue for a jurisdiction than it spends in supporting such working lands. These reasons provide a sound fiscal basis for public investment in a TDR ordinance, to help preserve significant resources and guide growth.



A TDR ordinance involves three basic elements: choosing the sending area(s) where resources need to be protected; designating receiving areas that can properly absorb the development rights from the protected areas; and, an administrator to track the rights transferred under the ordinance. The first two of these elements are discussed below. A model ordinance for administering the TDR process is set out in the final part of the Discussion of Key Points, which follows the text of CRC's TDR ordinance.

B. The Selection of Sending Areas

The first step to a TDR ordinance is to find sending areas with resources that need to be protected. The choice of sending areas is not simple. Sending areas reflect a region's significant resources, the location of those resources, and an assessment of which of those resources can be successfully protected by limiting development. The resources involved must first be identified, inventoried, and mapped in detail. This may require knowledge and planning for a significant watershed area. Then sending area(s) must be designated where one, or preferably several, resources can be protected by allowing the owners of land in that area to transfer their development rights. CRC's TDR ordinance, in Decision Point Number 1 following the text of that ordinance, has a very useful discussion of the considerations in selecting sending areas.

A transfer of development rights usually arises out of a private agreement between the owner of the sending parcel and a party who wants to purchase development rights from the sending parcel, although the development credits that are transferred must be publicly recorded. While the rights are usually purchased in a private transaction, furthermore, a public effort typically is the best method for choosing the resources and areas to be protected.

Governments regularly balance between the need for protecting resources and the need for development, such as in comprehensive plans. The selection of proper sending areas requires such balancing. A variety of interests are affected by the balances that are struck. For this reason, the best planning processes typically seek to reach a consensus



about the best areas to protect, by involving all groups that may be affected by the choices made. Unless a consensus or balance is reached between the goals of green infrastructure planning and the need for growth, the process of selecting sending and receiving areas may become a series of ongoing battles that can defeat the momentum necessary to carry the planning process to a successful conclusion.

One important aspect of selecting sending areas is that the planning process frequently will involve more than one jurisdiction, because the resources and the development at issue may run across jurisdictional boundaries. Each jurisdiction will define the criteria for its own TDR ordinance, but each jurisdiction should do this with an awareness that protection of its resources and growth may require supportive measures by adjacent jurisdiction(s). By selecting mutually supportive measures, whether or not they all adopt TDR ordinances, jurisdictions may better maximize the protection of their shared resources. Cooperative green infrastructure planning may give each jurisdiction the greatest return on its TDR investment.

C. The Selection of Receiving Areas

This section discusses some amendments to the Model Subdivision Regulations that may help counties and municipalities use CRC's TDR ordinance by allowing more density in Conservation Subdivisions. The transfer of density to an area may be counterproductive, however, if the transfer is not done carefully. First, as discussed above, such a transfer should help preserve resources in proper sending areas. Second, the receiving area should be suitable and attractive for development, and should not have significant resources that will be degraded or lost as a result of denser development. Little would be accomplished by allowing more development on parcels that will never be developed at all, or by allowing development that would destroy significant resources that might be saved. Third, each receiving parcel should be planned and designed to minimize the effects of development, including any added density that may be transferred to the parcel. These criteria can be met through best development practices.



If a Conservation Subdivision is carefully designed, the result can be more dense development in areas where development should take place, with better post-development results than conventional subdivision practices would produce with less intense development on the site. These results are possible because Conservation Subdivisions use “green” development practices –e.g. disturbing less land, allowing lots to be smaller and more flexibly laid out, protecting open space, and reducing impermeable surface area– that allow Conservation Subdivisions to function better environmentally, even when they are more densely developed than conventional subdivisions. Article XII of the Model Subdivision Ordinance details many of these green development practices. CRC’s Planned Unit Development ordinance details many similar development practices. The Green Growth Guidelines, at Section 2.6, illustrates results that can be achieved by the use of green development practices on a hypothetical tract on Georgia’s coast.

A jurisdiction can reap many benefits through a TDR ordinance that concentrates more development on less land and that promotes better development practices, including: less sprawl from residential development; less taxes to serve and maintain the infrastructure required by unguided growth; increased demand for transfer of development rights, thus protecting more sending areas; less development pressure on areas where there is a consensus that development is undesirable; more profitable opportunities for development in appropriate areas; and, better results where development occurs, compared to conventional subdivisions.

To accomplish these results, a TDR ordinance should include criteria to ensure that allowing denser development of a Conservation Subdivision will provide better results than would conventional subdivision development of the same parcel. These criteria amount to a list of conditions the jurisdiction requires, in exchange for allowing greater density in a Conservation Subdivision. The criteria are chosen by a jurisdiction when it writes its TDR ordinance. The following sections list some considerations that may assist a jurisdiction in choosing its criteria.



1. Setting the Conditions for Receiving Parcels

As noted above, a receiving parcel should be designated with due regard for its suitability for development and for the resources on that parcel. A set of conditions may be described in the TDR ordinance to help ensure that receiving parcels are suitable for development. Some possible conditions are set out, in Exhibit A to this Appendix, that may help to define the parameters that a Conservation Subdivision should satisfy, in order to qualify as a receiving parcel that receive density bonuses. A jurisdiction chooses these conditions based on where it wants development to occur, as discussed in Decision Point Number 2 in CRC's TDR ordinance. The appropriate conditions will vary with the local concerns and goals of the TDR ordinance in a jurisdiction. The conditions listed in Exhibit A are intended to serve only as a starting point for a jurisdiction's determination of the actual conditions it wants in its TDR ordinance.

Subpart 1 and 2 of Exhibit A require that a Conservation Subdivision must be eligible for transfer of development rights under the applicable TDR ordinance. These, of course, are the minimal legal requirements for receiving a transfer of development rights. Further, subparts 3 - 5 of Exhibit A state that a Conservation Subdivision cannot receive a density bonus if it uses a septic tank system, and that it must be of a suitable size to allow it to be developed as a mix-use "village" project, without sacrificing either significant resources on the parcel, or the surrounding property owners' enjoyment of their properties. The conditions restrict the use of septic tanks systems, or of designs that negatively impact surrounding properties, because those are incompatible with high density development. These conditions also give the highest densities under the TDR ordinance to "village" developments, which are those that can include many lots and mixed uses (e.g. residential, office, and commercial). Concentrating density in such parcels tends to maximize the benefits of a TDR ordinance by: increasing the opportunities to transfer development rights from more sending parcels; rewarding Conservation Subdivisions that undertake the more detailed planning and greater risks of high-density cluster development; and, limiting sprawl without limiting the opportunity to develop. (Incentive



bonuses of up to 15% are available, under Section 3.1 of Article XII of the Model Subdivision Regulations, for smaller parcels). Finally, subpart 6 of Exhibit A is intended to set reasonable minimums for stormwater runoff reduction, Open Space easements that protect a Conservation Subdivision's significant environmental features, and undisturbed land on larger, more densely developed parcels.

2. Setting the Density for Larger Receiving Parcels

In addition to defining which Conservation Subdivisions will qualify for denser development, a jurisdiction may also designate the level of density allowed on those parcels. A list of possible density criteria is set out in Exhibit B to this Appendix. Again, this list is only a starting point for a jurisdiction's consideration of the densities it wishes to allow, based on local concerns and goals.

Three density bonuses are allowed under Exhibit B: (1) a density bonus (from 15% to 35%) based on the amount of stormwater runoff reduction achieved on the parcel; (2) a density bonus (up to 26%) for maximizing the amount of preserved open space on the parcel; and (3) a density bonus (up to 16%) for increasing the undisturbed land on a parcel. These three density criteria described in Exhibit B are intended to create reasonable limits on the amount of density allowed on a given parcel. For each bonus, considerable effort will probably be required to obtain the maximum density allowed, because the ability to reduce stormwater runoff, or to increase undisturbed land or open space, will decrease as density is added to a project. For this reason, a given parcel will be unlikely to maximize all three densities allowed under Exhibit B. Indeed, Exhibit A's maximum density (i.e. 75%) is less than the three bonuses added together. The goal of these density bonuses is to improve a Conservation Subdivision's post-development results, both on site and for the entire community, as density is added under available bonuses. The densities are intended to be realistically achievable incentives for better development practices and results. The objective is to insure that, as a parcel maximizes its allowable density bonuses, it will become a greener development than if it had not obtained that density.



Subpart i of Exhibit B allows a density bonus for reducing, on-site, the stormwater runoff from the site resulting from the 85th percentile storm event. This is the base reduction recommended by the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual. This means that the site must be designed so that the rain from a 1.2" storm event will be absorbed, infiltrated, evapotranspired, or captured and reused on site, rather than being allowed to run off the site. This reduction can be reached by using green infrastructure practices, which the State of Georgia is increasingly demanding. An initial bonus of 15% is a suitable incentive for developers providing this level of stormwater runoff reduction.

The bonus under subpart i of Exhibit B increases as on-site measures are put in place to reduce stormwater runoff from higher percentile storm events. Thus, if a parcel reduces the runoff from an 86th percentile storm event, the density bonus would increase to 17%. For reducing runoff from an 87th percentile storm event, the density bonus would be 20%. An 88th percentile reduction yields a bonus of 24%; an 89th percentile reduction yields 29%; and, for a 90th percentile reduction, the bonus is maximized at 35%. The 90th percentile storm event, which corresponds to a 1.5" rainfall, is one of the highest levels of stormwater control currently recommended under the Coastal Stormwater Supplement.

The bonuses provided under subparts ii. and iii. of Exhibit B are intended to reward increases in the type of preserved community Open Space and undisturbed land that are essential in a Conservation Subdivision. This includes community preserved Open Space that protects the primary and secondary environmental features (as defined in the Model Subdivision Regulations standards at Section 5.2 of Article XII) of a parcel, as well as land that is protected by covenant from disturbance. A site may receive 1% additional density for each 1% of Open Space it provides above a 40% baseline. The 40% baseline is intended to require Conservation Subdivisions, in order to qualify for substantial density bonuses, to have more Open Space to buffer their density than is required of other Conservation Subdivisions. The bonus for preserved community Open Space maximizes at 26%, because a Conservation Subdivision that is two thirds Open Space can



extensively buffer the one third of the site that is developed. The incentive for increased undisturbed land adds 1% density for each 1% of undisturbed land that is maintained, above a 60% baseline. This density bonus maximizes at 16%, corresponding to a site total of 76% undisturbed land, at which level a great majority of the site will be in an undisturbed condition, helping to ensure the site's ability to reduce runoff by natural processes of infiltration, absorption and evapotranspiration. These two bonuses reward a site that retains its natural ability to filter water and reduce stormwater runoff, despite any higher-density development that is added on the remainder of the site.

**EXHIBIT A**

As a new Section 3.3 A. to Article XII of the Model Subdivision Regulations add the following:

Article XII of this Ordinance is intended to permit the transfer of development rights to a Conservation Subdivision, under a duly enacted Transfer of Development Rights ordinance, if the Conservation Subdivision satisfies the following requirements:

1. [the Local Jurisdiction] has enacted and implemented an ordinance for the transfer of development rights;
2. the transfer of development rights complies with all applicable local and state requirements affecting such transfer;
3. the parcel to be developed will not use a septic tank system;
4. the parcel to be developed can accommodate the Open Space required under this Article XII and protect the significant natural resources located on the parcel, including all resources that qualify as Primary Conservation Area under Subsection 5.2.A of this Article XII;
5. the parcel will follow the mixed use, “village” development approach described in Section 2.6.2.3 of the Green Growth Guidelines, or an equivalent mixed use, clustered development approach;
6. the parcel, after development, will meet the following standards:
 - i. the water runoff limits of the Coastal Stormwater Supplement;
 - ii. a minimum of forty percent [40%] of preserved Open Space;
 - iii. a minimum of sixty percent [60%] of the total Conservation Subdivision area shall be undisturbed by grading or construction activity in the development of the Conservation Subdivision.
7. the tract, if developed with any of the density bonuses provided under Subsection 3.2 of this Section, must comply, in addition, with the performance



criteria set out in Section 3.2 for the particular density bonuses used in the development of the tract.

EXHIBIT B

As a new Section 3.3 B. to Article XII of the Model Subdivision Regulations add the following:

As an incentive for the transfer of development rights from approved sending areas, a Conservation Subdivision that may receive development rights in compliance with all of the requirements of [the Local Jurisdiction] may request the following additional density bonuses:

- i. A density bonus of 15% of the maximum number of lots determined pursuant to Section 3.1.A. or B. of this Article, may be requested for meeting the stormwater runoff reduction of an 85th percentile storm event, as recommended under the Coastal Stormwater Supplement; and, bonuses may be requested under this subpart i for reducing stormwater runoff from higher percentile storm events shall be: 17% for an 86th percentile rainfall; 20% for an 87th percentile rainfall; 24% for reducing an 88th percentile rainfall; 29% for reducing an 89th percentile rainfall; and, 35% for reducing the stormwater runoff from a 90th percentile rainfall;
- ii. For each one percent [1%] increase in the percentage of the upland Buildable Area of the parcel set aside as preserved community Open Space, above the baseline of forty percent [40%] minimum of such preserved Open Space required in subpart v., below, a density bonus of one percent [1%] may be requested by the applicant, up to a maximum of twenty six percent [26%] of the number of lots determined pursuant to Section 3.1.A or B. of this Article;
- iii. For each one percent [1%] increase in the percentage of the total site that is undisturbed, above a baseline of sixty percent [60%] of the total Conservation Subdivision area, a density bonus of one percent [1%] may be requested, up to a maximum of sixteen percent [16%] of the number of lots determined pursuant



to Section 3.1.A or B of this Article, provided that, before any bonus can be used under this subpart iii, the undisturbed land for which the bonus is given must be identified on the Final Plat of the Conservation Subdivision, and a covenant that can automatically renewed under the provisions of O.C.G. A. §44-5-60 (d)(1) must be executed and recorded limiting any future disturbance of that undisturbed land; and

- iv. The total percentage of density bonuses that may be allowed under this subpart B. shall not exceed seventy five percent [75%] of the maximum number of lots determined pursuant to Section 3.1.A or B. of this Article: provided, however, that no portion of a density bonus available under this Section can be used on a Conservation Subdivision under this Article XII, if that portion of the bonus is otherwise substantially required pursuant to local, state, or federal government regulations or ordinances; and, provided further, that the density bonuses may be denied under this subpart B. to the extent that a bonus claimed under this subpart B. results from incidental factors, such as the configuration or selection of the site proposed for development, rather than from meeting the requirements or development standards of this Article XII, the Green Growth Guidelines, or the Coastal Stormwater Supplement in developing the Conservation Subdivision.
- v. The densities provided under this subsection B. shall be available only by transfer of development rights.